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Grasping the Challenges and Conspectus of Governance and Accountability in the Extractive Industries of Cameroon

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ABSTRACT

This paper provides a comprehensive governance regime for the extractive industries (EI) by addressing the interlocking challenges that their extraction and consumption create for the environment, security and justice. Since even though Cameroon is endowed with huge extractive resources, the EI of the country is laden with adverse social and environmental effects, weak transparency and accountability, and minimal economic benefits. As such, the first steps of the country toward good governance is to secure a political will and develop a better relationship between the various stakeholders. Despite some initiatives, the country still has a long way to go in the fight for transparency and accountability due to its closed and exclusory policy. Especially as the EI is an area that ignites expectations from the government, to manage and provide relevant information on the available resources and how they are utilised. With one of the most efficient ways of managing these expectations being to promote open, accountable and transparent governance of the EI, as well as how the revenues accrued are used. Since where openness and transparency in management is lacking, it might lead to ineffective socio-economic development often referred to as a 'resource curse' - as the unmet expectations can result in conflicts. It is for this reason that the international community has attempted to provide best practices in the form of guidelines to aid the country to put in place and implement measures that can promote open, accountable, and transparent governance of the EI. With the most common initiative being the Extractive Industries Transparency Initiative (EITI) - which is meant to promote governance and accountability in the EI. In this regard, the paper discusses how Cameroon, with its nascent EI can effectively implement the EITI standard. Since the implementation of EITI alongside, the domestic legislation governing the EI can enable it to escape the 'resource curse' and enhance sustainable development. Nonetheless, although the paper did not capture all the factors that have affected the management of the EI in Cameroon, particularly the political economy dimension, which can be a valuable area to research at length. It, however, provides an initial assessment of the management of the EI, based on the concept of good governance, which remains a work in progress. As the lack of transparency and accountability in extractive management can translate to a failure to engage in medium to long-term development planning in the country – which can also put EITI, though a good initiative, in high risk of capture. On this basis, the paper suggests changes in the incentives structure to reduce collusion and improve governance.

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INTRODUCTION

Explicitly, the Extractive Industries (EI – oil, gas and mining production) are the key source of investment and revenue for several countries in Sub-Saharan Africa (SSA). With such investment and revenue expected to continue to rise rapidly over the next decades as commodity prices remain strong and new reserves are developed across SSA. Despite this, intrinsically, the SSA countries have not succeeded in translating the revenues from the EI into sustainable economic development. A situation that has contributed to the theory that countries dependent upon EI revenues suffer from a "Resource Curse", in that EI by its nature tends to undermine the economic and political bases for sustainable development. As such, the quality of governance is generally viewed as a crucial element influencing whether the SSA countries can avoid the "Resource Curse" and use EI investments and revenues as a positive factor in

development. Thus, building upon this assessment, donors (bilateral and multilateral) and recipient governments in SSA have paid increasing attention to capacity building to improve governance in countries dependent upon EI revenues, as the key measure needed to counteract the "Resource Curse". On this account, Cameroon, with its abundance of natural resources, varied climate and diversified population, is one of the potentially richest countries in SSA. Despite this, its growth performance since independence has been very mixed, as the country is considered one of the best examples of the "Resources Curse" - because its growth performance has been dismal and volatile. With its annual average growth rate being around 3.5% over the past four decades, which is less than half of the average of lower-middle-income countries.[1] Likewise, its Gross Domestic Product (GDP) growth averaged 5.7% between 1972 and 1979, driven by the cocoa and coffee boom - but with the discovery and start of production of oil in 1977, there was a shift in growth trajectory with the country growing at around 9.4% between 1977 and 1986.[2] Although the high growth episode was short-lived, because of a combined drop in the prices of commodities and oil, coupled with mismanagement that plunged the country into a severe economic crisis. Thus, between 1986 and 1993, its GDP contracted by 5% on average, a combined 27% over the 8-year period, dropping per capita income in 1993 to half of its 1986 level.[3]

Nevertheless, the growth collapse occurred despite its reluctant engagement with the IMF in September 1988, to adopt and implement its series of Structural adjustment Programmes that were later supported by the World Bank. Moreover, the spell of negative growth culminated with the 50% devaluation of the CFA Franc in 1994. This led to the implementation of measures in the country that aimed at reforming public finances and the macroeconomic environment, including tax and commercial policies. As such, since 1995, the country resumed positive growth rates although still struggling to grow above 5%. A situation that was worse between 2001 and 2007, when its growth was 1% points lower than the 4.5% achieved between 1995 and 2000, making it in 2007 than it was in 1985.[4] Based on this, the analysis of the development outcomes reveals a very bleak picture, since it portrays that Cameroon did not harness its extractive resources for sustained growth and development. This is because, since the mid-eighties, the already poor physical, social and human capital indicators have deteriorated dramatically. For this reason, it is worth using recently available datasets on oil production,[5] an estimate of the oil rent effectively captured by Cameroon since 1977, an analysis of the aggregate investment and savings decisions from the oil rent, and the factors explaining the country's poor development outcomes.[6] Besides, the lack of transparency and accountability is fueled by internal political pressures that have led to sub-optimal spending policies. The contracting arrangements between the Government of Cameroon (GoC) and the International Oil Companies (IOC) are relatively favourable to the country. As a consequence, the GoC captured a sizeable portion of its oil rent – around 67%, though only about 46% of the total oil revenues accruing to the government between 1977 and 2006 might have been transferred to the budget. With the remaining 54% not properly accounted for. In this vein, the paper argues that poor governance is the culprit - since the lack of transparency and accountability in the management of the extractive revenues, has translated into a failure to engage in medium to long-term development planning for the country. As the decision to "save" Cameroon's extractive revenues abroad is proving to be sub-optimal given the lack of a transparent and accountable framework to manage them and the poor governance record of the country. This is coupled with the fact that developing countries like Cameroon, being capital scarce often use their natural resources revenues to accumulate assets within the country rather than in foreign assets that, on average, will yield lower returns.[7]

For this reason, the donors, who are to share in the blame for inconsistent advice and weak monitoring, are pushing for improved governance and transparency of the EI for the past 30 years. This effort is currently evolving, especially with the advent of EITI, which is a good initiative with credibility though with some drawbacks. On this account, the paper advocates for the change of incentives, and the reduction of collusion, which includes the creation of

[1] IMF (2007a). Cameroon selected issues, IMF Country Report No. 07/287, International Monetary Fund, Washington, D.C.; IMF (2007b), Cameroon Article IV Statistical Appendix.
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*

[5] Cossé, S. (2006). "Strengthening Transparency in the Oil Sector in Cameroon: Why Does it Matter?" IMF policy discussion paper 06/02, IMF, Washington, DC.
[6] Gauthier, B. and Zeufack, A. (2009). *Governance and Oil Revenues in Cameroon*. (Revenue Watch Project, OxCARRE, Oxford University).
[7] Collier, P., Van Der Ploeg, F. and Venables, A. (2009). "Managing Resource Revenues in Developing Economies", *OxCarre* Research Paper # 2009-14.

an energy regulatory agency - to strengthen the monitoring capacity and willingness of the donor, and push for hard reforms in the EI and the overall governance structure. In this regard, the paper is presented in two parts. With the first part examining the challenges of governance and transparency of the EI in Cameroon, with a focus on the predominant hydrocarbon sector and institutional arrangements governing the sector. While the second part elaborately x-rays the contemporary trends and prospects of governance and transparency of the EI in Cameroon, by tackling the issues of reforms and measures put in place to counterbalance the challenges to governance, accountability and transparency of the EI - to highlight appropriate recommendations for posterity.

I. PURVIEW OF THE CHALLENGES OF GOVERNANCE AND TRANSPARENCY OF THE EXTRACTIVE INDUSTRIES IN CAMEROON

Concisely, since governance is broadly defined as any activity that affects the management of the EI by the national and sub-national authorities, or that affects the direct impact of the EI in the economic, environmental or social spheres. As such, the activities that are worth examining include the legal and regulatory aspects of EI exploration and production, organisation of the EI, fiscal and contractual arrangements for EI, management and training of personnel for the EI, transparency and accountability in the EI, participation in and coordination of decisions processes regarding EI, and management of the government revenues generated by EI production. On this account, due to the vast nature of the EI, it is worth focussing on the hydrocarbon sector. This is because its institutional arrangements are unique and complex, especially as the oil extracting companies continue to operate within a hybrid fiscal system - since the National Hydrocarbons Company (Société Nationale des Hydrocarbures - SNH), which is the core public company for the sector is directly controlled by the Presidency. Besides, SNH is the main joint venture associate in oil production, the transit of the overall government oil take, as well as the regulator of the sector. Nevertheless, experience has shown that in countries with insufficient development of the governance quality level before the natural resources windfall, the natural resource rent often leads to rent-seeking and corruption.[8] For this reason, it is worth considering the environment of poor governance and corruption in which the policy choices were made during the last three decades, particularly the lack of transparency in the management of the hydrocarbon revenues. Equally, it is also vital to examine the role played by donors like the World Bank and the IMF in trying to reform the institutional arrangements in the country over the last few decades, notably in the hydrocarbon sector. That being the case, this Part vividly x-rays the poor level of governance and high corruption in Cameroon, in relation to the evolution of transparency in the hydrocarbon sector, juxtaposing the activities of the donor in the country. As the context is one of weak monitoring and incomplete reform implementation, the donors are seen as the main advocates for greater transparency and fundamental institutional reforms to improve accountability and transparency - notably the creation of a regulatory agency in charge of the EI.

1. The Spectrum of Governance, Transparency and Corruption

In point of fact, Cameroon has been considered as one of the most corrupt and poorly governed countries in the world - as it is being ranked the most corrupt country in the world twice as per the Transparency International (TI) Corruption Perception Index (CPI).[9] This is because the overall state of governance in the country was considered poor by several governance quality indexes. In this vein, various measures of governance have been devised in the last decades to assess the governance quality, that is, the institutional structure and decision-making environment at the political and economic level – with most of the measures having emphasized the following three main characteristics: (i) Efficient and capable State, (ii) accountable to its citizens and which (iii) operates under the rule of law.[10] As such, one of the main sets of governance indicators that possesses such characteristics is the World Bank's Worldwide Governance Indicators (WGI). As it presents the views of a large number of enterprises, citizens and experts on the quality of governance relating to the six dimensions of governance: (i) control of

[8] Sala-i-martin, X. and Subraamnian, A. (2003). "Addressing the Natural Resource Curse: An Illustration from Nigeria", *NBER* Working Paper Series w9804; Karl, T. (2007). "Ensuring Fairness: The Case for a Transparent Fiscal Social Contract", in Humphreys, Sachs and Stiglitz (editors) *Escaping the Resource Curse*, (Columbia University Press, NY), pp. 256-285.

[9] Cameroon ranked 85 out of 85 countries in the CPI index in 1998, and 98 out of 98 countries in 1999. It currently ranks 141 out of 180 countries in the CPI 2008. See www.transparency.org.

[10] Kaufmann, D., Mastruzzi, M. and Kraay, A. (2008). "Governance Matters VII: Aggregate and Individual Governance Indicators, 1996-2007", *World Bank Policy* Research Working Paper No. 4654, The World Bank, Washington, DC.

corruption, (ii) rule of law, (iii) voice and accountability, (iv) government effectiveness, (v) regulatory quality, and (vi) political stability. These six governance indicators intrinsically show that the quality of governance in Cameroon is very low, compare to the other African and middle-income countries - as Cameroon is ranked in the bottom quintile for all the dimensions of governance.[11]

Similarly, according to other measures of governance, it is observed that the institutional quality, in particular the level of corruption, is very problematic in the country. On this account, as per the Transparency International Global Corruption Barometer of 2007, 79% of citizens in Cameroon report having paid bribes to government officials during the past 12 months - the highest rate of bribe payments among African countries surveyed. Likewise, businesses operating in the country also cite corruption as one of their main problems, being reported as the second most important constraint for doing business according to the World Economic Forum's Global Competitive Index (WEFGCI), just after access to financing.[12] Equally, various other governance quality indicators also point to a very low governance level in the country. For instance, the WEFGCI of 2007 provided that Cameroon is the third worst country overall in the international index in terms of diversion of public funds (126th out of 128 countries). Besides, the country also ranks very near the bottom with regard to the strength of auditing and accounting standards and public trust of politicians (respectively 122nd and 120th). What's more, it ranks 120th out of the 128 countries for its institutional environment, as measured by the independence of its judiciary, the efficacy of government, and the level of corruption.[13]

Correspondingly, though civil liberties and political rights are the two fundamental components of democratic life and good governance, they are also perceived as severely deficient in the country. This is because according to the Freedom House index, which evaluates the state of civil liberties and political rights around the world since 1973, Cameroon is ranked very near the bottom. With the overall ranking of the countries along this index classifying countries as "Free", "Partly Free", and "Non-Free". Although before 1977, Cameroon was classified as "Partly Free", the first year of oil production marked the advent of worsening civil liberties and political rights. As such, since then, the country has been classified as "Non-Free", a non-enviable status it has kept for the last 30 years.[14] Moreover, another index of democracy, the Polity IV index of civil liberties and democratic governments,[15] also emphasizes the very poor level of governance in Cameroon – by reiterating that Cameroon has been classified as an "Autocratic regime" since its independence in 1960. Although the late 1980s and early '90s marked the beginning of a democratic era for several African countries, this process has not changed much in Cameroon.[16] In addition, an often emphasized explanation for the persistence of autocratic regimes in States with extractive resources is associated with the mechanisms of a "rentier State", created by the extractive revenues and the associated coercion and/or corruption.[17] Which is envisaged to be at the core of the political regime in place in Cameroon because of the existence of the oil revenue rent, coupled with the secrecy surrounding its size and use. Since a very important share of the resources from the EI of the country is unaccounted for. In this case, it is worth considering the specific issue of lack of accountability and transparency of the EI in Cameroon, and the particular role played by the donors in influencing oil revenue transparency.[18]

2. The Evolving Trends of Governance in the Extractive Industries

Instinctively, secrecy has been the norm in the EI in Cameroon since the beginning of oil production. Despite this, the GoC has agreed to gradually provide more transparency over the period, mainly in response to the pressure from the donors - although the situation is still very far from full accountability and transparency. That being the case, it is essential to vividly peruse the various periods of transparency

[11] *Ibid.*, Cameroon, African and Middle-income countries percentile rank in the World Governance Indicators 2007.
[12] World Economic Forum (2007). *The Global Competitiveness Report 2007-2008*, (Geneva, Switzerland).
[13] *Ibid.*

[14] Freedom House (2008). *Freedom in the World 2008: The Annual Survey of Political Rights and Civil Liberties*, Freedom House, Washington, D.C. See also World Development Indicators (2007). *World Development Indicators*, CD-Rom, The World Bank, Washington, D.C.
[15] Marshall, M. and Jaggers, K. (2006). "Polity IV Project: Political Regime Characteristics and Transitions, 1800–2006", available on: http://www.cidcm.umd.edu/inscr/polity/index.htm.
[16] *Ibid.*, on the database of political indicators.
[17] Jensen, N. and Wantchekon, L. (2004). "Resource Wealth and Political Regimes in Africa", *Comparative Political Studies*, 37, pp. 816-841.
[18] The term 'donors' means international financial institutions like the IMF, the World Bank and the African Development Bank (ADB), together with bilateral donors. The most important bilateral donors in Cameroon are France, Germany and the European Community.

in the EI, especially the level of transparency in the hydrocarbon sector during the last three decades, which can be divided into the following five main periods:

A. Period from 1977-1979 (depicted as the "opaque period"), is the first period that commenced at the time when oil was discovered off the west coast of Cameroon, and its subsequent commercial production in 1977 - with no specific state structure in existence to regulate the sector or its relations with IOCs. As such, the responsibilities regarding the management of the sector, relationships with oil companies and the use of oil revenues were directly assumed by the Presidency of the country. As in this era, full secrecy surrounded the contractual arrangements with the IOCs, as the public oil revenues were deposited in secret accounts.[19] A position supported by *Benjamin et al.,* who affirmed the view that such revenues were deposited outside the Cameroonian banking system. Despite Cameroon's obligation as a member of the Central African Currency Union (*Banque des Etats de l'Afrique Centrale* - *BEAC*), to keep its official reserves in the Bank of France, the GoC was still reportedly accumulating sizable foreign exchange outside the Bank of France, probably in US banks.[20] In this vein, the period is seen as one characterised by "total opacity" in the management of extractive resources. As the negotiation of the hydrocarbons contacts, and management of the hydrocarbons revenues were mainly by the President of the Republic of Cameroon (PRC) – which made it difficult to estimate how much revenues accrued to the secret foreign accounts, since their use was never fully established. Despite this, it is worth noting that the secrecy surrounding the hydrocarbon revenues during this initial period is progressively being lifted since then.

B. Period from 1980-1986 (depicted as the "secret accounts period"), is the second period that commenced with the creation in 1980 of the SNH, to assume the responsibility of the hydrocarbon sector - by overseeing the relationships with the oil companies and managing the oil revenues. However, despite the creation of the SNH, the PRC did not abandon control over the hydrocarbon sector. As the SNH was placed under its direct authority with the General Secretary of the Presidency as the President of the Administrative Board of SNH – who is an appointee of the PRC. As such, to date, these fundamental institutional arrangements defining the presidential control over SNH have not been modified. Thus, the creation of the SNH did not modify the level of secrecy surrounding oil revenues. This is because as was the case during the first period, the oil revenues transferred by the IOCs or derived from the direct oil sales of SNH were deposited in secret bank accounts. With the citizens having virtually no information on the level or usage of the oil revenues. This was so even during the economic boom period that accompanied the oil boom, very little information openly circulated in the country about the activities of the hydrocarbons sector. As oil revenues were not an openly discussed issue, the citizens had very little means of getting information about the sector – because of the highly centralised and secretive nature of the GoC. Equally, in this period, no dissidence was tolerated, as the policy was enforced at times through violent measures.[21] As a consequence, the population had to rely on vague statements made by high-level officials during the period. As they were repeatedly told that the oil reserves of the country were very limited and would, at best, last a decade. Which was a deliberate policy to placate the population that the extractive revenues were modest and transitory, to help reduce the expectations of the importance of the oil manna, along with the need for public scrutiny.

C. Period from 1987-1990 (depicted as the "off-budget period"), is the third period, when the external shocks hit the country starting in 1985, as the GoC just adopted its sixth five-year plan (1986-1990). As the authorities first chose to push ahead with their state-led development strategy, by eventually trying to reduce spending. Although the investments and wage bills of the boom period were hard to roll back, as large deficits and domestic arrears appeared. For this reason, discussions were initiated with the IMF and the World Bank in 1987, leading to the signing of an IMF Stand-by-Agreement in 1988. Which was the first in a series of eight IMF agreements to date and an equal number with the World Bank.[22] On this

[19] DeLancey, M. (2000). *Historical Dictionary of the Republic of Cameroon*, (Scarecrow Press, Lanham, MD): 14.

[20] Benjamin, N., Devarajan, S. and Weinerm R. (1989). "The 'Dutch Disease' in a Developing Country: Oil Revenues in Cameroon", *Journal of Development Economics,* 30 (1): pp. 71-89.

[21] French National Assembly (1999). *Rapport d'information sur le rôle des compagnies pétrolières et son impact social et environnemental*, (Paris, France).

[22] World Bank CEM 1987 (1978-1984 period). Cameroonian authorities (1985-2005 period). IMF and Cameroon authorities (2006 period) for revenue and expenditures data. GDF. WDI 2007 (1977-2005 period); IMF country report 2008 and World Bank Cameroon data at-glance 2008 (2006-2007 period) for the remaining variables.

account, a year after the first IMF agreement, the first Structural Adjustment Loan (SAL) was completed with the World Bank, with the support of various bilateral and multilateral donors like the African Development Bank. With the SAL seeking to reduce the role of the State in the economy, and liberalise and reform several sectors, especially the banking, insurance and labour laws. In this vein, two breakthroughs with regard to oil revenue transparency were directly associated with these first agreements with the Bretton-Woods Institutions (BWI). The first was immediately visible during the negotiations of the Stand-by-Agreement, as the oil revenues appeared for the first time in the finance law of the State. With oil revenue transferred under the heading *"Redevance pétrolières"* being reported as an off-budget account in the budget for the first time in 1987.[23] While the second breakthrough in oil revenue transparency having occurred during the period via the first World Bank and IMF scrutiny of the oil revenues of Cameroon. Thus, in a confidential 1987 Country Economic Memorandum, the World Bank presents, for the first time, estimates of oil revenues transferred from the secret accounts to the budget for the period 1980-85. Although such estimates were, however, speculative given the fact that the authorities of Cameroon refused to provide official oil revenues figures to the BWI.[24] With the estimates constructed by the World Bank using various independent data sources like the major commercial banks, BEAC accounts etc. In this vein, it is noted that while estimating revenues was an important first step toward increasing transparency in the sector, the BWI did not sanction the authorities regarding the secret contractual arrangements with the IOCs, nor the use of secret bank accounts or the overall "secrecy surrounding critical oil-sector data".[25]

From these, it is observed that transparency in the management of the hydrocarbon resources was not seen as paramount during this period. This is because while the World Bank perceived the lack of transparency as presenting shortcomings,[26] it simultaneously considered the practice to favour good public resources management, in particular by preventing undue expectations from the public.[27] As the first doubts about the potential negative effect on the accountability of secrecy in the sector were raised in a 1988 World Bank report. Although the report sides again with the approach of the authorities of Cameroon, emphasizing the advantages that the secrecy presents for reducing public expectations by stating that, "While the secrecy has potentially dubious effects on the responsibility and accountability for public revenues, it does presumably have the benefit of reducing the various pressures to increase government spending, which emerge once it becomes clear that the government is flush with funds".[28] For this reason, it is worth noting that the BWI's reports during that period lauded the GoC for the management of the budget and the secrecy surrounding oil revenues as they reiterated that, "The policy of using discreetly the revenues from oil-production sharing to finance additional investments and various expenditures through the extra-budgetary accounts, permitted the GoC to avoid excessive public expectations and was probably the key to its prudent management of oil resources and external borrowing".[29] Despite this, around 1989, when it was becoming clear that Cameroon was facing Dutch Disease symptoms, opinions of analysts and the BWI about the "prudent management" of the authorities started to change.[30] As authors like *Jua* believed that the secrecy was a scam by the authorities to hide the misappropriation of funds.[31] Besides, *van de Walle* posited that despite the official appearance of oil revenue transfers in the finance laws starting in 1988,

[23] *Jua* also believes that the IMF placed pressure on Cameroon to include oil revenues in the budget. See Jua, N. (1993). "State, Oil and Accumulation", in Itinéraries d'accumulation au Cameroun/Pathways to Accumulation in Cameroon, edited by Geschiere, P. and Konings, P. Paris: ASC-Karthala, p. 141.

[24] "Detailed public finance accounts are not available, nor are data on the execution of the extra-budgetary accounts". See World Bank (1987). "Cameroon: Recent Performance and Adjustment to Declining Oil Revenues", Country Economic Memorandum, 6395-CM, The World Bank, Washington, DC. pp. 2, 6 and 32.

[25] *Ibid*., p. ii.

[26] The only potential negative effect of the lack of transparency is not viewed by the World Bank in terms of lack of public accountability, but instead from a technical point of view with regard to difficulties in public budgeting associated with the uncertainty surrounding government revenues. *Ibid.*, p. 26.

[27] "To prevent the oil receipts from giving rise to undue expectations on the part of the population, the Government has managed them with discretion. The share of these receipts that the Presidency decides to allocate to the extra-budget accounts each year is not known in advance, even by the technical ministries concerned". *Ibid.*, p. iii.

[28] World Bank (1988b). "World Development Report 1988: Background Paper", The World Bank, Washington, D.C., p. 36.

[29] World Bank (1987)., *op cit.*, p. 26.

[30] Benjamin et al. (1989)., *op cit.*

[31] Jua (1993)., *op cit.*

there is the existence of secret oil accounts controlled by the PRC.[32]

D. Period from 1991-1999 (depicted as the "partial SNH audits period"), is the fourth period, which ignites another milestone in terms of oil revenue transparency in 1991, the year of the second adjustment programme with the IMF. Thus, for the first time that year, some components of SNH activities were partially audited – while the first warnings about the lack of transparency in the activities of the GoC were equally issued by the World Bank.[33] Moreover, a year later, the World Bank issued its most severe criticisms about the mismanagement of funds and lack of accountability by the authorities of Cameroon.[34] Intrinsically, for the first time, the World Bank specifically raises the problems of corruption in Cameroon – by calling for deep governance reforms and forecasts problems in future lending operations if no remedial is found.[35] However, while the 1992 Strategy Paper of the country, clearly identified governance problems and called for explicit institutional reforms regarding transparency and the role of the SNH, most of these reforms are yet to be implemented.[36] Indeed, despite the non-implementation of the fundamental governance reforms coupled with the slow pace of other less fundamental reforms, the lending activities of the BWI and bilateral donors went forward.[37] Nonetheless, following the devaluation of the CFAF in 1994, given Cameroon's loss of creditworthiness for IBRD lending, a second Structural Adjustment Credit was developed by the International Development Association (IDA) - the World Bank concessional window.[38] With the 1994 World Bank's adjustment programme once again underlining the need to improve accountability and transparency in the hydrocarbon sector.[39] Since as part of the aid package, a series of reforms were to be implemented by the GoC, including the audits of SNH operations, consolidated statements of its operations and partial privatisation.[40] Equally, the other World Bank reports during the period also emphasized the weak level of governance in the country. With the 1996 report, for instance, underlining the high level of corruption

[32] van de Walle, N. (1994). "Neopatrimonialism and Democracy in Africa, with an Illustration from Cameroon" in *Economic Change and Political Liberalisation in Sub-Saharan Africa*, edited by Widner, J. Baltimore: Johns Hopkins. van de Walle, p. 141.

[33] In a 1991 Financial Sector Report, the World Bank warns that the hydrocarbon sector's institutional arrangements do not allow adequate governance and accountability. With the authors proposing in particular the elaboration of a hydrocarbon sector regulation and fiscal code distinct from the mining law, the simplification of contractual and legal arrangements in the sector, and a redefinition of the role of SNH. Equally, the report specifically recommends the elimination of inconsistency between the general fiscal code and the special contractual arrangement negotiated with oil companies. It also recommends the replacement of the hybrid system of sharing arrangements and guaranteed rent with a simple system clear and simple. See World Bank (1991). "Cameroon Structural Adjustment Loan" (3089-CM), Release of the second tranche, 1 April, The World Bank, Washington, D.C., p. 115.

[34] World Bank (1992). "Country Strategy Paper", The World Bank, Washington, D.C., June, pp. 1-5.

[35] *Ibid.*, pp. 9-10.

[36] The report presents an agenda of institutional reforms emphasizing transparency in public expenditure and investment and systematic use of audits, notably in the hydrocarbons sector. *Ibid.*, p. 10.

[37] While there were sometimes delays in credit disbursement, overall SAL lending activities went forward. For instance, with regard to World Bank activities, the GoC failure to implement reforms led to delays in the disbursement of the SAL-I third tranche. It also slowed down World Bank projects in the country in the early 1990s as only one new commitment was made during the 1992-1994 period - an IBRD agricultural loan. See World Bank (1994). "Republic of Cameroon: Economic Recovery Credit", Country Economic Memorandum, P-6359-M, The World Bank, Washington, D.C. Annex, p. 24.

[38] The central issue of the second structural adjustment programme was on the public enterprise reform agenda. Since Cameroon had created a large portfolio of public enterprises during the oil boom, several of which were very inefficient and survived only through SNH's oil revenue transfers. As such, it was recommended to the GoC to include in its public enterprise reform agenda, the partial privatisation of SNH. *Ibid.*, p. 9.

[39] "In the hydrocarbon sector, IDA's assistance strategy aims at (i) increasing transparency in the management of the sector, including partial privatisation of some of the key enterprises in the sector, and (ii) supporting government effort to improve the incentives framework for further exploration and development of new oil and gas fields". *Ibid.*, ERC, p. 2

[40] The report states that "The Government intends to implement a number of measures aiming at improving the efficiency and transparency of the petroleum sector. Along with the other public enterprises, SNH, SONARA and SCDP will be required to prepare annually certified accounts within six months of the close of their financial year and will be subject to annual audits carried out by qualified auditing firms. Moreover, given the importance of oil revenue to government finance, the SNH is, as of January 1994, required to produce consolidated quarterly statements of all financial operations carried out in its own name and the name of the Government". *Ibid.*, p.12.

affecting all components of the society, and questions the legitimacy of the GoC.[41]

Despite these bleak diagnoses and various recommendations for reforms included in the World Bank and IMF aid packages, very little progresses on the hydrocarbon governance and transparency front was made during this period. Nevertheless, in August 1997, a new three-year Economic and Financial Programme supported by the Poverty and Growth Alleviation Facility (PAGF) of the IMF, as well as the third Structural Adjustment Credit (SAC III) of the World Bank were signed. As such, a decade after the first adjustment programme was launched, a new generation of reforms was put forward. With both BWI programmes including a reform agenda dealing with governance and corruption issues, in particular: (i) improvement of public finances and expenditure management, (ii) greater transparency in the management of public affairs, and (iii) anti-corruption efforts. On this account, in June 2000, the IMF considered that the GoC was achieving sufficient progress in its reform agenda and declared that the 1997-2000 programme had reached a satisfactory conclusion. According to the IMF, the reform programme had led to a series of economic and structural reforms that have contributed to improving governance in the country, in particular in the hydrocarbon sector.[42] Interestingly enough, however, during that period, while the authorities of Cameroon were receiving praise from donors, the country received, in two conservative years, the dubious distinction of being declared the most corrupt country in the world according to the TI corruption index[43].

E. Period from 2000-present (depicted as the "partial verification period"), could be seen as the beginning of a new stage of revenue transparency in the EI. This is because the satisfactory completion of the 1997-2000 IMF lending programme led to a potentially huge reward for the GoC, with the establishment of an IMF and World Bank-supported HIPC facility, which would ultimately erase most of the external public debt of the country.[44] As such, the debt reduction package put forward as part of the HIPC initiative was substantial - including the "traditional" reduction given by the Paris and London clubs, enabling the debt reduction to amount to about US$4.9 billion in 1999.[45] Moreover, in theory, the HIPC *ex-ante* conditionality approach would constitute an increase in incentive for the country to reform.[46] Which was indeed the hope of HIPC designers, with the IMF stating in this regard that, "The alleviation of debt would provide an important incentive for Cameroon to accelerate and broaden its reforms".[47] In this vein, the HIPC programme was designed with a series of specific policy targets attached to conventional IMF operations in the country during the period. In exchange for debt alleviation, the country was asked to commit to a new round of reforms and implement a series of specific

[41] World Bank (1996). "Republic of Cameroon country assistance strategy", Country Economic Memorandum, 15275-CM, The World Bank, Washington, D.C., p. 2.

[42] The IMF notes for instance that, "The government economic programme of the past three years has aimed at addressing some governance issues by reducing incentives and opportunities for rent-seeking mainly through improved public expenditure management, and the regular transfers of oil revenues to the budget". See IMF (2000). Cameroon Article IV statistical appendix, IMF Country Report No. 00/80, International Monetary Fund, Washington, D.C., pp. 15-16. As the IMF reports that the audits of SNH activities were performed during the 1997-2000 period by independent accounting firms, and the SNH accounting and data systems were modified to bring them in line with international standards. *Ibid.*, Annex, p. 51. Although these reports did not provide information about the specific nature of these reforms, and audit reports were never made public.

[43] See www.transparency.org.

[44] During the oil boom and subsequent years, Cameroon accumulated very important public external debt, which amounted in 1999 to US$7.8 billion (85% of GDP), and absorbed 23% of government revenues. As such, Cameroon's large public external debt led the country to face five rescheduling agreements with the Paris Club between 1989 and 1997 and the debt stock was considered unsustainable. See World Bank (2006). "A New Resolve to Sustain Reforms for Inclusive Growth", Country Economic Memorandum, 29268-CM, The World Bank, Washington, D.C., p. 71. With most of the debt being due to bilateral donors (69%, including France 25% and Germany 18%) and international organisations.

[45] World Bank (2006)., *op cit.*

[46] The HIPC programme is designed in such a way that it requires changes in policy before disbursements are made. At a decision point at the beginning of the process, a country commits to implement a series of reforms and a set of identified targets. Once these various targets are satisfactorily reached, the completion point is declared and debt alleviation is put forward. As such, this approach of requiring reform implementation before disbursement in the HIPC programme follows the IMF *ex-ante* commitment approach to lending. With the World Bank, while following in principle the same approach in the 1970s to late 1990s, has since moved toward an *ex-post* results approach (as many bilateral donors have), which entails requiring reforms at the end of the disbursement. See Collier, P. (2006). "Is Aid Oil? An Analysis of Whether Africa can Absorb More Aid", *World Development* 34 (9): pp. 1482-1497, for a discussion of these commitment approaches.

[47] IMF (2000)., *op cit.*, p. 6, p. 18.

measures. As the IMF recognised the high level of corruption and poor governance in the country and again called for new reforms.[48] Besides, as was the case in previous reform programmes initiated by the BWI, specific emphasis was placed on improving accountability in public management and transparency, particularly in the hydrocarbon sector.[49]

Notwithstanding, instead of carrying out fundamental institutional reforms in the hydrocarbon sector called for in the decision point documents, the GoC chose to demonstrate its commitment by adopting a five-year National Governance Programme -*"Programme National de Gouvernance"*(PNG I) in June 2000.[50] With the programme aiming to fight corruption, strengthen public financial management, transparency, accountability and participation in public affairs, and improve justice and human rights. For this reason, the adoption of the PNG was seen as a milestone for the GoC by the BWI.[51] This is because it heightened the importance of good governance to economic and social development in Cameroon and signalled the determination of the GoC to resolutely deal with the HIPC issue.[52] Despite this, although the HIPC's completion point was to be reached in 2004, the deadline was, however, missed because of the various delays and difficulties in implementing the reforms. Thus, to prove its commitment anew, the GoC adopted a second PNG (PNG II) in 2005. While in addition, in March 2005, it announced its intention to join EITI to signal its determination to improve governance in the EI.[53] Intrinsically, following these last-minute commitments, the HIPC completion point was declared in 2006, which represented a windfall of about US$5 billion for the GoC.[54] What's more, the HIPC completion point documents proudly report that the action plan for improving governance and combating corruption has been satisfactorily implemented by the GoC.[55] Besides, the report was highly optimistic about the progress accomplished during the HIPC period as it states that, "The progress on governance reforms since the Decision Point, and especially in the past two years, provides the basis for the belief that the government will sustain the pace of implementation of these reforms, with continued improvements in governance trends".[56] Despite these, another World Bank document released the same year presents an opposite view on the pace of reforms in

[48] These reforms were euphemistically called second-generation reforms following the 1997-2000 reforms - but were in fact the third or fourth-generation reforms since 1988. In practice, though, very little had been implemented in the area of governance reforms. See IMF (2000)., *op cit.*, p. 23.

[49] Echoing the institutional reforms proposed a decade earlier in the 1991 and 1992 World Bank country reports, various reforms are proposed to improve oil revenue transparency and SNH activities. However, these fundamental institutional reforms with regard to the role of SNH and oversight mechanisms in the hydrocarbon sector are yet to be fully implemented. As such, the IMF reiterated that there needs to be improved reporting on hydrocarbon activities, particularly by the SNH, strict adherence and full transparency, as well as a clearer and more streamlined delineation of the roles and responsibilities of each party in the hydrocarbon sector need also to be implemented. In particular, SNH's activities were streamlined and limited strictly to that of liaison with the foreign oil companies operating in the country, and its staff was reduced accordingly. (IMF (2000)., *op cit.*, p. 31.

[50] The programme had been in discussion for four years with the United Nations Development Programme (UNDP).

[51] According to the World Bank, the PNG resulted in tangible gains in governance. For example, the government has initiated a number of important reforms in the procurement, budget management, and forestry sectors. The HIPC completion point triggers included the implementation of governance and anti-corruption measures, in particular in the areas of judicial and procurement reforms, budget execution, and the creation of regulatory agencies. See World Bank (2006)., *op cit.*, p. 6 and p. 149.

[52] World Bank (2006)., *op cit.*, p.148.

[53] The PNG II covers democratic, administrative and economic governance, notably a specific subcomponent on corruption. As such, two main institutional reforms were part of the programme: (i) establishing an independent anti-corruption agency; and (ii) presenting a draft bill to the 2006 parliamentary session requiring asset declaration by public officials (including the President, the Prime Minister, other ministers, high officials in government and public enterprises and members of the National Assembly). See World Bank (2006)., *op cit*., p. 27.

[54] Indeed, in addition, to close to $2 billion in debt alleviation provided by HIPC, the completion point decision was associated with additional relief under the Multilateral Debt Relief Initiative (MDRI) of almost $3 billion. Overall, the result has been a decrease in the stock of external debt and debt service, reducing the external debt over export and GDP ratio from 153% in end-2005 to 13% in end-2006, and from 33% to 3% per cent in 2006. See World Bank (2006)., *op cit.*, p. 71.

[55] In addition to the PNG II and the recent adhesion to EITI, in particular: (i) the creation of an independent agency to spearhead the anti-corruption campaign (CONAC); (ii) the adoption of a bill during the March 2006 parliamentary session that requires public officials to publicly disclose their wealth, including the President, the Prime Minister, ministers, high officials in government and public enterprises, as well as members of the National Assembly, and (iii) creation of an Audit Court.

[56] World Bank (2006)., *op cit.*, p. 28.

Cameroon by stating that "after Cameroon reached the HIPC completion point in April 2006, the drive seems to have lost momentum and is now stalled. As such, a rekindled effort is needed from the GoC if its well-publicised anti-corruption campaign is to remain credible to the populations, gain steam and help improve governance, the business climate and the effectiveness of the administration".[57]

3. The Commitments and Governance Initiatives in the EI

Instinctively, the bottom line of the GoC has been very keen to make commitments to the donors to carry out governance reforms over the years, with some results. This is because, in practice, very few institutional reforms have been truly implemented, coupled with the fact that they have been very slowly enacted and were merely symbolic and inefficient in promoting sustainable governance. For instance, the creation of the Audit Bench of the Supreme Court in Cameroon announced in 1996[58] to oversee the external audits of government activities was only established seven years later in 2003.[59] With it becoming partly operational only in 2006, and subsequently fully operational since 2012, in reviewing government accounts. Similarly, a government plan to fight corruption was put forward in 1999, with the creation of a National Observatory - which later became the National Anti-Corruption Commission – *"Commission Nationale Anti-Corruption"* (CONAC) in 2006. As such, although the donors labelled CONAC as independent and praised its establishment, others considered that it is not independent. This is because its president and members, budget, work plan, and the follow-up of the reports are determined by the PRC.[60] What's more, a law was adopted in 2006, prescribing all high-level government officials, from the PRC down to the directorate level, to declare their assets at the beginning and end of terms of office. Despite this, the Commission expected to enforce the law has never been created. Furthermore, the inefficiency of the institutional reforms in the country could probably be best exemplified by the hydrocarbon accounts and cash transfers of SNH. This is because, since its creation, SNH has engaged in transferring hydrocarbon revenues toward discretionary activities under the guidance of the PRC. In particular, during the second period from 1980-1986, the revenues were directed toward secret accounts, although some were partly officially transferred to the budget starting in 1988 and later transparency periods. Besides, over the years, it is worth noting that SNH still retains a fraction of the revenues for discretionary activities outside of the budget process.[61]

As the documents of the donors frequently mention such problems of direct SNH transfers, with calls for the closing of this tap becoming a recurring theme over the years. For this reason, as early as 1991, such an objective has been put forward in the World Bank and IMF documents as a required reform in the hydrocarbon sector. Although the HIPC decision point document announced that such transfers have basically stopped due to the efficiency of the reforms put in place.[62] Nonetheless, during the following years, SNH transfers continued with subsequent donor reports again claiming that the transfers have been discontinued. On this account, in recent years, the GoC has intensified efforts to enhance transparency in budget execution, by reducing the use of special procedures *(procédure dérogatoire),* which permit to bypass the expenditure chain. Thus, as part of this process, the GoC has discontinued all cash advances *(intervention directe)* since January 2006, which were made outside the Treasury by SNH that did not follow the normal budgetary spending procedures.[63] Equally, the IMF made some efforts to stop the discretionary transfers by creating a compulsory performance criterion in the IMF programme.[64] With the objective to convert the quantitative benchmark on cash spending by SNH to a performance criterion, reflecting the authorities' commitment to refrain from extra-budgetary spending.[65]

4. The Implications of Corruption on Governance and Transparency in the EI

In this connection, an even clearer demonstration of the symbolic nature of the commitment of the GoC to reform - is to look at the evolution of the hydrocarbon revenues not transferred to the budget during the last

[57] *Ibid.*, p. 163.
[58] See Law No. 96/06 of 18 January 1996 of the Constitution of the Republic of Cameroon as amended.
[59] World Bank (2006)., *op cit.*, p. 154)
[60] Van Hulten (2008)., *op cit*, p. 17.
[61] Cossé (2006)., *op cit.*, p. 15; Article IV IMF (2007)., *op cit.*, p. 40.
[62] IMF (2000)., *op cit.*, p. 16.
[63] See IMF (2007a). Cameroon selected issues, IMF Country Report No. 07/287, International Monetary Fund, Washington, D.C; IMF (2008). Cameroon: Fifth Review Under the Three-Year Arrangement, IMF Country Report No. 08/279., p. 39; World Bank (2006). "A New Resolve to Sustain Reforms for Inclusive Growth", Country Economic Memorandum, 29268-CM, The World Bank, Washington, D.C., pp. 52-53.
[64] See IMF (2007). Cameroon Article IV Statistical Appendix, IMF Country Report No. 07/286, International Monetary Fund, Washington, D.C., pp. 2, 3, 41.
[65] *Ibid.*, p. 27.

two decades of donor-supported adjustment programmes. On this account, it is interesting to examine the evolution of the hydrocarbon revenue gaps during the five periods of hydrocarbon revenue transparency identified earlier, to see if the reforms put forward over the years have been more symbolic than effective at reducing unaccounted hydrocarbons revenues. As such, it is noted that during the opaque period from 1977-1979, the level of unaccounted oil revenue amounts to about US$334 million. Though it was relatively small compared to the forthcoming years, as it was still the beginning years of oil production in the country - since the production levels were quite limited during the first three years.[66] By the same token, during the oil boom period from 1980-1987, oil revenues were still being placed in secret accounts and were not included in reporting procedures. However, during the years after the collapse of the economy, the GoC tried to maintain the same state-led development strategy. As the official oil revenues appearing in the budget during that period were almost equivalent to the estimated oil revenues. With the estimated unaccounted revenues for the period being only about US$ 76 million.[67] Indeed, as discussed above, it appears that during the crisis years, before the establishment of donor-supported assistance programmes, the GoC adequately transferred oil revenues to the budget and the oil gap was minimal. Nevertheless, as part of the negotiations with the donor in 1991, the first audit of SNH was officially realised, ensuring the improvement of the management of oil revenues. This donor-supported economy readily reversed the situation, as the level of unaccounted oil revenues increased to US$ 1.8 billion during the 1991-1999 period. With the same paradoxical situation being observed for the subsequent period. Although the situation was expected to improve drastically with the introduction of the HIPC programme, with its various performance criteria and the launching of the EITI initiative in 2005. Unfortunately, the opposite situation is observed since the estimated level of unaccounted revenues has never been higher - an estimated US$ 2.6 billion for the 2000-2006 period. From this, it is observed that despite all their good intentions and commitments they were able to obtain from the country, the donors were not able to bring about effective governance reforms in the country. As the situation of oil revenue management does not seem to have improved, on the contrary. Since the SNH discretionary transfers continued, as the level of unaccounted oil revenues actually appears to have increased over the years. This is coupled with the very slow pace of anti-corruption and governance reform progress in the country, as noted by some donors. A situation that prompted a group of six bilateral donors supported by the United Nations Development Programme (UNDP) to put together a special anti-corruption programme - *Change Habits Oppose Corruption* (CHOC) Programme, to investigate the situation on the ground, including the inefficiency of CONAC and propose improvements. As such, in its first major report in June 2008, CHOC, headed by a former deputy from the Netherlands, presented very negative conclusions. As it argued that the most important basic assumption of the donors funding project of CHOC and those of other documents, strategies, plans, reviews, etc., regarding Cameroon, show that although those with economic and political power in Cameroon want to end corruption, those in power are not willing to stop the rich flow of means that they enjoy at the moment.[68] That being the case, the CHOC commission declined to collaborate with CONAC, which was considered unfit to pursue its mission as long as it has not gained independence from the PRC.[69] Since the report perceives the direct link between the PRC and CONAC, as official anti-corruption activities from a political perspective: by asserting that "the official fight against corruption is used for political purposes by the PRC".[70] Moreover, the report attributes a direct role of oil and forestry companies in exacerbating corruption by asserting that the national and expatriate companies fuel the corruption to maintain

[66] It is interesting to note that our estimates constructed using independent production figures are very similar to those put forward by the World Bank. Indeed, a 1994 report arrived at the same amount of about US$350 million of undisclosed funds for the period. The report states: "Accumulated (unrepatriated) earnings of SNH are strictly confidential and for the most part appear to be held as foreign assets; as such, they do not enter into Cameroon's banking system or its formally reported foreign exchange reserves…Assuming no transfers from SNH to the CHB in 1980 and 1981 (for which no data are available) total accumulations of unrepatriated oil revenues were probably somewhat less than CFAF 150 billion, or roughly $350 million." See World Bank (1994). "Republic of Cameroon: Economic Recovery Credit", Country Economic Memorandum, P-6359-M, The World Bank, Washington, D.C.

[67] 1987-88 period

[68] van Hulten (2008)., *op cit.*, p. 1.

[69] *Ibid.*, p. 9.

[70] The report states that "The arrest of ministers is best understood as a realignment of political friends and foes by the President, not as a bold move forward in the fight against corruption. It is a handy tool to raise oversea expectations of desirable changes in Cameroon while, at home, they keep friends in line and enemies quiet". (van Hulten (2008)., *op cit.*, p.17.

their position in the world markets.[71] Based on this, *van Hulten* emphasizes that the "methodology and tactics of fighting against corruption have to be re-invented, although acknowledging that the political will does not exist".[72]

Intrinsically, this is because scoring 149 out of the 168 countries in the 2019 Transparency International Corruption Perception Index, corruption is a risk if proper controls are not in place to safeguard the activities in the EI. For this reason, it is argued that apart from the anti-corruption legislation in place, a wide range of foreign legislation relating to the bribery of public officials applies to the extractive companies operating in Cameroon. These include the US Foreign Corrupt Practices Act (FCPA), the Canadian Corruption of Foreign Public Officials Act (CFPOA), the UK Bribery Act, etc., which also forbids the bribing of private individuals in addition to public officials. On this account, any company accepting or taking bribes as part of local purchasing would be at risk of infractions if these laws apply to them. In addition, several international companies have put in place a code of conduct or an equivalent policy. Moreover, a recent report from the OECD[73] lists several mechanisms by which corrupt activities can occur through both procurement and social spending and provides examples of controls that can be used to reduce corruption risks. From this perspective, it is worth noting that the EI in Cameroon has been hit by several scandals. With the US Department of Justice and the UK Serious Fraud Office having announced on 24 May 2022 that the Anglo-Swiss multinational Glencore has pleaded guilty to bribes in several countries, including Cameroon.[74] By alluding that between 2007 and 2018, Glencore and its subsidiaries caused approximately US $79.6 million in payments to be made to intermediary companies to secure improper advantages to obtain and retain business with the State-owned and State-controlled entities in the West African countries, such as Cameroon, Equatorial Guinea, Ivory Coast, and Nigeria. With the US Department of Justice revealing that Glencore has concealed such bribe payments by entering into sham consulting agreements, paying inflated invoices, and using intermediary companies to make corrupt payments to foreign officials, as revealed by the US Department of Justice. Likewise, in Cameroon, the lawyer defending the company admitted that Glencore paid CFAF 7 billion to curry favour with the heads of the SNH and the National Refinery Company (SONARA). In corroboration to this, on 20 July 2014, three organisations – the Berne Declaration, Swissaid, and the NRGI, published a report entitled "Swiss trading companies, Africa oil and the risks of opacity", which reveal that "Swiss traders – Glencore, Gunvor, and Vitol together bought around half of the crude oil sold by SNH in 2013. With these sales resulting in payments by Swiss companies to the GoC of around US $600 million, which is equal to 12% of the 2013 government revenue. That being the case, it is worth noting that such payments by the companies are subject to governance risks - because they took place in environments where there is widespread corruption and weak institutions. Besides, although they generate a significant portion of public revenues, such transactions often escaped oversight due to opaque practices and weak regulations. On this account, the report suggests that "oil-producing governments and national oil companies should adopt rules and practices that encourage integrity in the selection of buyers and determination of the selling price, including detailed public disclosures on how the State's share of production is allocated and sold".[75] In this regard, it is worth examining the current trends of governance in the EI of Cameroon

II. DISCUSSION OF THE CONSPECTUS OF GOVERNANCE AND ACCOUNTABILITY IN THE EXTRACTIVE INDUSTRIES OF CAMEROON

Intrinsically, as elaborated above, governance is broadly considered as any activity that affects the management of the EI by the national and sub-national authorities, or that affects the direct impact of the EI in the economic, environmental or social spheres. As such, the relevant areas to access the current developments of governance in the EI of Cameroon, in order to ameliorate the debilitating challenges identified so far include: The legal and regulatory aspects of EI exploration and production, organisation of the EI, fiscal and contractual arrangements for EI, transparency and accountability in the EI, participation and coordination of decision processes regarding EI, management of the government revenues generated by EI production, etc. In this regard, this part of the paper is presented in four sections, with the first focusing on the overall picture of hydrocaron governance, the second on

[71] van Hulten (2008)., *op cit.*, p. 1.
[72] *Ibid.*, p. 2.
[73] OECD (2016). OECD Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption.
[74] https://www.businessincameroon.com/public-management/3105-12583-glencore-says-it-bribed-snh-and-sonara-with-cfa7bln.
[75] *Ibid.*

mining governance, the third on the management of extractive revenues, and the fourth on accountability and disclosure in the EI, in seriatim.

1. The Overall Picture of Hydrocarbon Governance in Cameroon

As indicated earlier, hydrocarbon exploration in Cameroon began in 1947, with the first exploration permit awarded on 16 April 1952 in the Douala basin. As such, the country effectively became an oil producer in 1977 following the start of production in the Kolé field from 1980 to 1986. Indeed, it experienced its most active period in terms of oil exploration in 1985, with a production level of 186,000 barrels/day. Gradually, crude oil production eventually reached 27.687 million barrels in 2017 – with the State and SNH share of the oil production being 16,091,884 barrels, representing 58.12% of the total production, while the oil reserves were estimated at 210.62 million barrels as of 31 December 2017. Similarly, gas exploration began almost at the same time as oil exploration - although the sector remained with sluggish growth for a long time due to a lack of profitability and trade opportunities. Thus, unlike liquid hydrocarbons that can be stored in a terminal for removal to international markets, the implementation of a gas project is subject to the prior identification of a downstream project to be used for its recovery. However, since the natural gas resources are estimated at 171 billion cubic meters as of 31 December 2017, coupled with the increasingly growing demand for electrical energy, the GoC set up the Emergency Thermal Plan (PTU) through the Electricity Sector Development Plan (PDSE), led by the Ministry of Water and Energy (MINEE) - to which MINMIDT and SNH contributed by confirming, in particular, the availability of gas resources for the extension of the Kribi power plant from 216 to 330MW, for the conversion to natural gas of heavy oil thermal power stations of Limbé (85MW) and Dibamba (86MW) and for the construction of a 340 MW gas thermal power station in Limbé. Likewise, a National Gas Resources Development Plan is being implemented, which includes major gas projects like: (i) The construction of a gas-fired thermal power plant in Kribi; (ii) the construction of a factory manufacturing chemical fertilizers from natural gas in Limbé; (iii) the supplying of natural gas to industries in Douala; (iv) the building of a natural gas liquefaction plant in Kribi (the Cameroon LNG project, the PERENCO FLNG Project); and (v) the Compressed Natural Gas for Vehicles (GNCV) project. With these plans providing for the production of electricity from various sources including the gas sector, production of which started in 2013 in Logbaba - Douala to address the energy deficit, with about thirty companies launching the production of electric energy from natural gas. The conversion of the LNG carrier Hilli into a floating liquefaction plant was completed on 1 October 2017, with the plant named "Hilli Episeyo". Equally, the work to extend the Natural Gas Treatment Center (CTG) in Bipaga, operated by the Perenco Cameroon company, was completed at the end of September 2017, increasing its capacity from 60 to 320 million cubic feet per day. In addition, the Ministry of Environment, Nature Protection and Sustainable Development issued the "Environmental Compliance Certificates" to the Golar Cameroon company - for the operation of the Hilli Episeyo at the offshore from Kribi, and to the Perenco Cameroon, for the operation of the new CTG facilities in Bipaga. Moreover, MINEE awarded Golar Cameroon a permit to liquefy natural gas. With an LNG export permit being awarded to SNH and Perenco Cameroon, as joint owners.

A. Legal and Institutional Framework of Hydrocarbon Governance:

i. The legal framework of the hydrocarbons sector:

Before the advent of the reforms, Petroleum activities were governed by Law No. 99/013 of 22 December 1999 on the Petroleum Code and its implementing Decree No. 2000/465 of 30 June 2000. However, due to the general nature of the provisions of the Petroleum Code, specific provisions governing the exploration and production activities of petroleum are included in the petroleum contracts, which take the form of a Concession Contract (CC) or a Production Sharing Contract (PSC).[76] With companies carrying out petroleum activities also subject to the Organisation for the Harmonisation of Business Law in Africa (OHADA) Uniform Acts - since Cameroon is a Member State, as well as to the customs and exchange regulations, applicable in the Economic and Monetary Community of Central Africa (CEMAC). On this account, as per the Petroleum Code, any entity carrying out petroleum activities in Cameroon is required to sign an oil contract. As such, the contractors can operate through a local subsidiary for the duration of the oil contract or through a branch. In this light, under the Petroleum Code and the OHADA Uniform Act on Commercial Companies, any foreign company having registered a branch must transform such a branch into a local company within a period of four years. Likewise, the Petroleum Code does not place any restrictions on foreign investments, who are treated the same way as local investments. Similarly, the GoC adopted Law No. 2012/006 of 19 April 2012

[76]http://www.snh.cm/images/publications/reglementation/Contrat%20type%20CPP%20en%20fran%C3%A7ais.pdf.

on the Gas Code and its implementing Decree No. 2014/3438/PM of 27 October 2014, governing transportation in the gas sector. Moreover, in addition to the Petroleum Code and OHADA Laws, petroleum taxation is governed by the General Tax Code[77], Ordinance No. 94/004 of 16 February 1994 on the taxation of petroleum products[78], Law No. 96/12 of 5 August 1996 on a framework law for environmental management, Decree No. 2013/0171 of 14 February 2013 setting the procedures for carrying out environmental and social impact studies[79], and Order No. 0069 of 8 March 2005 setting the different categories of operations, the completion of which is subject to an environmental impact study[80].

ii. The specific fiscal regimes of oil contracts: In addition to the taxes foreseen by common law, the petroleum activity is subject to the following specific taxes of oil contracts: *(1) Production royalty in CC,* which is payable in cash or in kind depending on the selected option in the contract. With the royalty payable on the basis of the Free on Board (FOB) value of the production – being calculated and settled monthly, as the rate is set in the contracts although vary depending on the level of production.[81] *(2) Additional petroleum royalty in CC,* is payable when the holders are subject to an additional royalty depending on the profitability of the petroleum operations, with the royalty rate often set in the contract. *(3) Signature and production bonuses in CC and PSC,* which is a bonus negotiated and paid either when the contract is signed or when production begins. *(4) Profit-Oil & Cost-Oil in PSC,* which is negotiated in the contract and payable in kind. That is, after the deduction of oil costs, the remaining production is shared between the State and the contractors on the basis of the "R" Ratio that corresponds to the cumulative net income/cumulative investments. *(5) Corporate income tax in CC and PSC,* which is payable in cash unless otherwise stated in the contract, the rate is fixed in the contract, although it often varies between the rate of the ordinary law and the profits from petroleum operations. *(6) Area fee in CC and PSC,* which is payable in cash, with the fee paid on an annual basis depending on the area of the permit. The fee is due according to the phase of the petroleum operations, such as the exploration permit or authorisation; production authorisation. *(7) Fixed fees in CC and PSC* are paid when the award and renewal of the petroleum authorisations or permits are subject to their payments for: Prospecting authorisation; exploration authorisation or permit; and production authorisation. *(8) Training costs in CC and PSC,* which is payable in cash and disbursed by the petroleum companies for the professional training in the petroleum field of Cameroonian nationals.[82] *(8) Withholding tax in CC and PSC,* which is an exemption for dividends distributed to non-resident entities with 16.5% on interest paid to non-residents in respect of debts and guarantees; 15% on services of non-resident subcontractors; and 16.5% in respect of profit on the sale of interests in the oil blocks or shares in companies holding exploitation or exploration permits. *(9) Value-added tax (VAT) in CC and PSC,* which is also an exemption for the petroleum operations, and taxation of related operations at the rate of 19.25%. *(10) Export duties and taxes in CC and PSC,* with exemption from petroleum operations. *(11) Import duties and taxes in CC and PSC,* with an exemption for the equipment and materials necessary for petroleum exploration and research operations; taxation at the reduced rate of 5% for other imports linked to production during the first five years of production; and subcontractors are also entitled to special customs regimes. In addition to this, petroleum contracts may provide specific tax advantages.

iii. The institutional framework of the hydrocarbon sector: The hydrocarbon sector is regulated and supervised by several government agencies including the Ministry of Mines, Industry and Technological Development (MINMIDT) and SNH. In addition, payments of specific taxes by oil companies are made to the government agencies placed under the supervision of the Ministry of Finance (MINFI). In this vein, the main governmental entities involved in the EI are as follows: *(1) MINMITD,* which designs and coordinates the implementation of the national hydrocarbon policy. It has a right of oversight over all petroleum activities on the national territory including determining the areas for petroleum operations; approving contract templates; authorising transfers of rights and obligations linked to the petroleum contracts; approving changes of control in companies holding petroleum contracts; authorising prospecting; and approving protocols, agreements or contracts signed

[77] http://www.impots.cm/uploads/Telechargement/CODEGENERALDESIMPOTS2017.pdf

[78] https://www.lc-doc.com/document/ordonnance-n94-004-du-16-fevrier-1994-portant-fiscalite-des-produits-petroliers/16191.

[79] *Ibid.*

[80] *Ibid.*

[81] See Article 94 of the Petroleum Code of 1999, whereby the State may collect the production royalty in kind.

[82] See Article 12 of the Petroleum Code of 1999 and the provisions of the petroleum contract.

between partners in a petroleum contract.[83] *(2) Directorate of Mines (DM)*, which is placed under the supervision of MINMIDT, with the mandate to ensure the implementation of the national policy on mines and hydrocarbons; monitoring the management and control of activities in the national mining sector, monitoring the transportation of hydrocarbons by pipeline and their removal at storage terminals; participation in control activities of oil and gas operations; and monitoring of State participation in the exploitation of minerals.[84] *(3) Directorate of Hydrocarbons*, which is also placed under the supervision of MINMIDT, with the mandate to supervise all the hydrocarbons activities like the preparation of acts of authorisation, exploration and exploitation of hydrocarbons; development and monitoring of the petroleum contracts, gas contracts and related specifications, as well as acts related to the storage of hydrocarbons; technical evaluation of offers in petroleum contracts, in conjunction with the concerned administrations; administrative and technical supervision of the exploration, exploitation, storage, pipeline transport, import, export and processing of hydrocarbons; monitoring the management of the national mining sector inherent to hydrocarbons; and – a collection of statistical data relating to the exploration, exploitation and production of hydrocarbons.[85] *(4) MINFI*, which through its three agencies (Directorate General of Taxes (DGI), Directorate General of Customs (DGD), and Treasury), ensures the collection of taxes from the EI on behalf of the State and the municipalities.[86] *(5) The National Hydrocarbons Company (SNH)*, which is placed under the supervision of the PRC, with a mission to ensure the research and exploration of hydrocarbons; manage the interests of the GoC in the context of oil production and exploitation operations; ensure commercial operations relating to the sale and purchase of crude oil on international markets on behalf of the State.[87] *(6) The National Refining Company (SONARA)*, which is a public company with the mission of refining crude oil and ensuring the supply of refined petroleum products (butane, super gasoline, jet, kerosene, diesel, distillate, fuel oil). And *(7) the Hydrocarbons Prices Stabilisation Fund (CSPH)*[88], placed under the guardianship of the Ministry of Trade, often known as "The Safe" is a self-governing public establishment, with the mission to regulate the prices of petroleum products to ensure the regular supply to the distribution stations. It promotes local consumption by harmonising prices between the storage centres, as the supply and distribution chain for petroleum involves refining, storage, transportation and distribution.

iv. The governance reforms in the hydrocarbon sector: Owing to the debilitating challenges in terms of governance in the EI discussed in the first part of this paper, the GoC in response, has recently adopted some major reforms to alleviate the situation, which include the promulgation of law No. 2018/011 of 11 July 2018 enacting the Code of transparency and Good Governance in Public Finance Management in Cameroon. With the Code providing, in particular, the obligation to make contracts publicly accessible between the administration and public or private companies, especially companies operating natural resources; the submission of petroleum contracts to the regular control of the jurisdiction of the accounts and the relevant parliamentary committees; the relationship between the public administration and public companies, which must be governed by clear provisions that are accessible to the public; and revenues from all sources, including those related to natural resource development activities, must be shown in a detailed and justified manner in the presentation of the annual budgets. Despite this, it is noted that the implementation of these provisions are yet to start pending the publication of the decree detailing the implementation modalities. What's more, it promulgates Law No. 2019/008 of 25 April 2019, instituting the new Petroleum Code. With the new Code specifying and complementing Law No. 99/013 of 22 December 1999 on the Petroleum Code, aiming to make it more incentive, attractive and adapted to the international petroleum context that is constantly changing - by improving all the issues linked to the exploration and exploitation of hydrocarbons. Thus, the main innovations brought by the new Code are: The possibility of the State to conclude, with petroleum contracts holders, agreements to create companies intended to conduct specific petroleum operations of general interest for the upstream petroleum sector, such as storage and management of export terminals; risk Service Agreement within the framework of the Petroleum Contracts, which are clearly separated from the CC and the PSC; the principle of the State prior approval

[83] http://www.minmidt.cm/

[84] http://www.minmidt.cm/mines/services/.

[85] https://minmidt-gov.net/fr/2013-03-25-14-29-55/administrationcentrale/direction-des-mines/sous-direction-des-hydrocarbures.html.

[86] http://www.minfi.gov.cm/#.

[87] http://www.snh.cm/index.php/fr/.

[88] Created by Decree No. 74/458 of 10 May 1974, reorganised by Decree No. 98/165 OF 26 August 1998, and Decree No. 2019/032 of 24 January 2019 on the CSPH.

in the context of any transfer of rights and obligations – with the absence of such approval resulting to the withdrawal of the authorisation and forfeiture of the contractor; considering the concepts of "control" and "change of control", since any change of control is also subject to the State prior approval, pending the withdrawal of the authorisation and forfeiture of the contractor. Similarly, in case of transfer of interests, there is the right of first refusal for the benefit of the State first, before it is in favour of the other joint owners – which is a major step forward as no transfer of rights and obligations can take place in Cameroon without the State having a say in the matter. Therefore, it enshrines the introduction of a bank guarantee or a group holding guarantee to cover the minimum work programme. Besides, it clearly provides that the State is entitled to decide on the withdrawal of authorisation or forfeiture when the license holder has not complied with the minimum work programme – as such, no communication can be made about a discovery by the license holder, without the prior approval of the State. Likewise, it provides the possibility for the license holder of an oil contract, acting as operator, to delegate to another license holder also acting as operator, for a period of less than twelve (12) months, part of its petroleum operations, subject to the prior approval of the Minister responsible for Hydrocarbons. Moreover, it provides for the application of "unitisation" when a hydrocarbon deposit extends over contractual boundaries located in different and neighbouring States (cross-border deposits).

In addition, there is the introduction of the concept of "Local Content" in the Petroleum Code – which is a very important concept that will enable the petroleum projects to have actual and measurable effects on the economic, social, industrial and technological development of Cameroon. In this vein, as per the new Petroleum Code, any petroleum project must include the followings: A component on the development of human resources and a component relating to the use of local companies providing services and goods; a vocational and technical training programme for Cameroonian nationals to increase their qualifications in the petroleum knowhow; the employment, as a priority and with equal qualification, of qualified Cameroonian nationals in all socio-professional categories and in all roles and; the precedence is given to companies under Cameroonian law having their main registered office in Cameroon working under internationally recognised standards in the specific field, work contracts, services, insurance, supplies, equipment and products directly or indirectly linked to the petroleum operations. On this account, the Minister responsible for Hydrocarbons and/or any government agency duly mandated for this purpose needs to ensure the implementation and monitoring of all the measures relating to Local Content. Moreover, the new Code provides that the data generated during the petroleum operations are and remain the property of the State as well as a provision dealing with the confidentiality of the data. It also simplifies the previous regime, as it foresees a single rate of 35% for the corporate income tax for income related to research and exploitation of hydrocarbons. Equally, it introduces for the first time in the Petroleum Code, of administrative fines and penalties pronounced directly by the Minister responsible for Hydrocarbons, without any prior involvement by the judicial authority.

B. Modalities of the Award, Transfer and Registration of Permits:

In order to enhance governance, the award and transfer of permits are governed by the provisions of Law No. 99/013 of 22 December 1999 enacting the Petroleum Code and its implementing Decree No. 2000/465 of 30 June 2000. As such, as per the provisions of the Code, the operators have the right to explore, develop and produce oil and gas by obtaining both an authorisation from the State and by concluding a contract with MINMIDT, defining the terms of the authorisation. For this reason, the Code foresees the following types of authorisation or permits: *(1) Prospecting authorisation*[89], which is the authorisation to prospect hydrocarbons in areas not covered by a petroleum contract. However, it does not constitute a hydrocarbon mining title and is not subject either to cession or to transfer, and does not confer to its holder any right to obtain a hydrocarbon mining title or to conclude a petroleum contract. The Authorisation Act is issued by a Decree of the Minister responsible for Hydrocarbons, for a validity period of two years, renewable once for a maximum of one year. *(2) Exploration authorisation*[90], which is linked to a petroleum contract and takes the form of a hydrocarbon exploration permit for concession contract (CC) and an exclusive exploration authorisation for the production sharing contract (PSC). On this base, the exploration authorisation for hydrocarbons gives its holder the exclusive right to perform within the limits of the awarded area and indefinitely in depth, except otherwise, all work of prospecting and research of hydrocarbons. With the Authorisation Act being issued by a Decree of the PRC, for a validity period of three years renewable

[89] See Articles 23 to 25, Chapter I of the Petroleum Code of 1999.

[90] *Ibid.*, Articles 26 to 34, Chapter II / Section I.

two times for a period of two years. *(3) Provisional exploitation autorisation*[91], which is provided during the period of validity of an exploration authorisation, whereby the holder can request a provisional authorisation to operate productive wells. With the Authorisation Act issued by a Decree of the PRC, for a validity period of two years maximum. *(4) Exploitation autorisation*[92], which is linked to the petroleum contract and takes the form of an exploitation concession for CC, and an Exclusive Exploitation Authorisation (EEA) for a PSC. With the hydrocarbon exploitation authorisation conferring to its holder the exclusive right to carry out within the limits of the awarded area, all the operations of a commercially exploitable deposit. The Authorisation Act is issued by a Decree of the PRC, for a validity period of 25 years for liquid hydrocarbons and 35 years for gaseous hydrocarbons, renewable once for a period of 10 years. That being the case, it is worth considering the types of contracts and their awarding procedures.

i. The types of hydrocarbon contracts: The Petroleum Code provides for three types of contract for upstream activities: *(1) Concession Contract (CC),* which is linked to a hydrocarbon exploration permit and, if applicable, to one or more exploitation concessions - is concluded prior to the award of a hydrocarbon exploration permit.[93] As such, it determines the rights and obligations of the State and the permit holder during the period of validity of the exploration permit and, in the event of the discovery of a commercially exploitable hydrocarbon deposit, during the period of validity of the concession. In this case, the holder of a CC covers the financing of the petroleum operations and disposes of the hydrocarbon extracted during the period of validity of the said Contract, in accordance with the provisions of the CC and pending the State right to collect the royalty in kind. *(2) Production Sharing Contract (PSC),* which is the contract under which the State awards an exclusive exploration authorisation or an exclusive exploitation authorisation covering the operation of a commercially exploitable hydrocarbon deposit.[94] As such, within the framework of a PSC, the production of hydrocarbons is shared between the State and the holder in accordance with the stipulations of said contract. With the holder then receiving a share of the production as reimbursement of the costs incurred and as its revenues in kind.

(3) Service Contract, which is a contract under which the contractor is not entitled to any part of the production but is paid in cash for his services and reimbursed for his cost recovery oil.

On this account, it is worth noting that all petroleum contracts are negotiated with the Permanent Commission for the Negotiation of Petroleum and Gas Contracts (CPNCPG), which is subject to Cameroonian law and contains all the provisions applicable to the exploration and/or production phase, in particular: The area of the exploration authorisation; the duration of the contract and the different periods of validity of the exploration authorisation, as well as the conditions for its renewal and extension, including the clauses relating to the reduction of the contractual area; the minimum exploration work programme and financial commitments; the transportation obligations; the rules of ownership of the production and its distribution between the contracting entities; the State participation; the tax and customs regime; the transfer and cession; the environment, health, safety and rehabilitation of the site; the obligations relating to the training and employment of the Cameroonian workforce; the obligation relating to the relinquishing of deposits; and the stability provisions, force majeure and dispute resolution clauses. That being the case, a contract template is provided by MINMIDT to serve as a basis for negotiations. Although in practice, only the standard template of the PSC is published on the SNH website, while the petroleum contracts must be signed by MINMIDT, SNH and the company's representative.

ii. The contract award procedures and register of permit: As per the Petroleum Code, only companies with the sufficient technical and financial capacity to carry out petroleum operations, and ensure the protection of the environment, can access the sector. Thus, block allocations are decided by the GoC, on a discretionary basis, either through a tender procedure or direct negotiation.[95] The petroleum contract is negotiated and signed on behalf of the State by the GoC or any government body mandated for such purpose, and the legal representative of the applicant(s). With Article 9 of the Code reiterating that the State using its absolute discretion shall assess and make offers of petroleum contracts and applications for authorisations. Besides, the final or conditional rejection does not give the applicant any right of recourse or compensation of any kind. Likewise, no priority right may be requested in the event of competing requests or offers. However, in

[91] *Ibid.,* Article 35, Chapter II / Section II.
[92] See Articles 36 to 44, Chapter III of the Petroleum Code of 1999.
[93] *Ibid.,* Articles 12-15.
[94] *Ibid.*
[95] See Article 5 of Decree No. 2000/465 of 30 June 2000.

the case of PSCs or service contracts, the entry into force is effective upon signature by the parties. But in the case of a CC, since the corresponding exploration permit is awarded by decree - the effective date of the CC corresponds to the date of the exploration permit. Therefore, the three procedures that an award can make are - transfer, competitive bidding and direct transfer.

Concisely, as for the transfer procedure, the holder of a petroleum contract that wishes to transfer directly or indirectly, all or part of the rights and obligations resulting from the contract, can do so by addressing a request to the Minister responsible for Hydrocarbons – and the transfer is awarded by decree within 60 days of receipt of the request. However, for the request to be accepted, the following technical and financial criteria must be observed: A complete legal file indicating the name, business name, address and nationality of the transferee; documents proving the financial and technical capacity of the transferee to carry out the work obligations and other commitments foreseen in the petroleum contract; any agreement between the transferee and the parties holding an interest in the petroleum contract relating to the financing of the petroleum operations; an unconditional written commitment from the proposed transferee to assume all of the obligations of the contract holder; and a receipt certifying the payment of transfer duties.

Correspondingly, as for the competitive bidding procedure, the Petroleum Code allows the call for competition to award petroleum blocks without specifying the modalities. However, in practice, the following steps are often followed: *(1) Preparation of the Terms of Reference (TOR)* for the blocks, with the TOR seting out the context, the content of the proposals to be submitted, the contractual and fiscal terms, the prequalification and evaluation criteria of the offers, the destination of the offers and the schedule of the procurement process; *(2) Publication of the invitation to tender*, in which the request for proposal including the TORs are published in the dedicated oil industry newspapers, such as 'Up Stream', 'IHS Energy', 'Africa Oil & Gas', as well as on SNH website; *(3) Organisation of the data room*, which is generally held at the SNH headquarters in Yaoundé and/or in Houston - USA and London – UK, with technical presentations to companies that have expressed an interest in the available blocks; *(4) Submission of tenders*; *(5) Public opening of the tenders*, which is held at the SNH headquarters in Yaoundé by the Permanent Commission for the Analysis and Evaluation of Tenders in the presence of all bidders or their representatives. With the offers received being subject to an evaluation by the aforementioned Commission; *(6) Publication of the result is notified to the tenderers*; and *(7) Negotiation of the contracts*, which occurs when the selected companies are invited to negotiate the petroleum contract with the Permanent Commission for Negotiations of Oil and Gas Contracts (CPNCPG). It is composed of a team of representatives from SNH and the Ministries in charge of Mines, Energy, Finance, Economy, Trade and Environment – with the negotiations taking place on the basis of the standard contract template. A procedure that is elaborately described in the 2017 SNH Annual Report is available on the company's website.[96] Conversely, the direct agreement procedure is similar to the competitive bidding procedure, except for the following points: The publication of the TOR of the blocks is made with the mention of "direct agreement procedure" instead of "open international tender", and each offer received is immediately analysed and evaluated by the standing commission for the analysis and evaluation of offers for the allocation of the titles. With the results communicated to the tenderers.

Notwithstanding, with respect to the register of permits, it is worth noting that Article 3 of Decree 2000/465 foresees a "special Hydrocarbons Register" for each category of authorisation and petroleum contracts at the level of MINMIDT. With the register including the following information: Documents relating to the request, award, period of validity, renewal, extension, waiver, termination, transfer, restrictions of authorisation, and any other related act; documents relating to the offer, award, transfer, relinquishment, termination, modifications to a petroleum contract and any other related act; and the pipeline transport authorisations awarded under Law No. 96/14 of 5 August 1996, regulating the transport by pipeline of hydrocarbons from third countries. Despite this, Decree No. 2000/465 does not specify how to access the register. Since in practice, MINMIDT has published in 2019, the directory of the petroleum titles on its website[97], including the information required by EITI Requirement 2.3(b). What's more, the 2017 SNH Annual Report provided that its online cartographic portal, named "GeoSNH" has started working, allowing remote access to SNH geographic and cartographic data by registered users. Although the coordinates of the petroleum titles are yet to be accessible on the SNH cartographic portal by external users. Since GeoSNH is still a software in

[96] Annual Report 2017, SNH - http://www.snh.cm/images/publications/Rapports%20annuels/rapport.pdf.

[97] http://www.minmidt.cm/repertoire-des-titres-petroliers/

the experimental phase, currently accessible only by the SNH engineers for their various studies. With remote access to the portal by external users being expected in the nearest future soonest.

A. Extent of State participation in the hydrocarbon sector:

According to the provisions of Articles 5 and 6 of the Petroleum Code, the State reserves the right to undertake petroleum operations, either directly, or indirectly through the government agencies duly mandated for such purpose. In this vein, the State reserves the right to acquire a participation in any legal form whatsoever, in all or part of petroleum operations subject to a petroleum contract - according to the terms and conditions provided for in the said contract. On this account, the duly mandated government agencies possess the same rights and obligations as the permit holder, in its participation in the petroleum operations, as set out in the contract. For this reason, it is worth examining the nature of the State-owned enterprise,

i. The nature of the State-owned enterprises: In accordance with Requirement 2.6(a) of the EITI Standard, a state-owned enterprise (SOE) is a wholly or majority government-owned company that is engaged in extractive activities on behalf of the State. A definition that is in line with the provisions of Law No. 99/16 of 22 December 1999 on the general status of public establishments and companies in the public and para-public sector - which considers any company where the State holds at least 25% of the capital as a public sector enterprise. That being the case, all the State enterprises directly involved in the EI or holding shares in the extractive companies are worth included for this purpose as follows: *(1) The National Hydrocarbons Company (SNH)* is a public company, of an industrial and commercial nature, endowed with financial autonomy according to the decree of 12 March 1980 that established it. Likewise, the law of 12 July 2017 on the general status of public companies qualifies SNH as a public capital company with the State as the sole shareholder. It has the mission to promote and enhance the national mining sector and manage the interests of the State in the hydrocarbon sector. Thus, for SNH to accomplish its mission, it is empowered to: Conduct studies relating to hydrocarbons; collect and store related information; conduct negotiations for oil and gas contracts, in conjunction with the ministerial departments in charge of Mines, Finance, Energy, Economy, Trade and Environment; monitor the execution of oil and gas contracts between the State and companies involved in the hydrocarbons sector; promote the creation of infrastructures for the production, transportation, processing and storage of hydrocarbons on the national territory; collect natural gas from the producing companies and ensure its transportation to industries, electricity plants, other eligible customers, distribution companies and processing sites; conclude, as necessary, agreements with companies operating in the field of production, transportation, distribution, transformation or storage of hydrocarbons established in Cameroon; contribute to the formulation and implementation by the State of its policy for managing the downstream hydrocarbon sector; and undertake in connection with MINFI, all financial operations. That being the case, SNH is placed under the supervision of the PRC, which ensures its overall monitoring. In addition, it is managed by a board of directors, which is responsible for designing strategies and implementing operational work plans.[98] For this reason, SNH carries out its missions on the basis of a five-year development plan, broken down into annual action plans, since it has financial autonomy for the management of its activities. Equally, SNH is actually a group that holds interests in various companies in the petroleum, oil services and related sectors, with its portfolio including 14 companies[99].

(2) The National Investment Company (SNI) is also a public company with the State as the sole shareholder. Its mission is to mobilise and guide national savings and any other financial means with a view to promoting investment operations of economic and social interest in several sectors including the hydrocarbon refining sector, particularly in SONARA where it holds 18.62% of the share capital. *(3) The National Refining Company (SONARA)* is a public limited company, in which the State holds as of 31 December 2017 80% of its shares, through a direct

[98] The composition of the board of directors as well as the organisation chart of SNH are available on its website: http://www.snh.cm/index.php/fr/presentation-de-la-snh/organigramme.

[99] PERENCO RDR 20% Exploration/production of hydrocarbons; PERENCO CAM 20% Exploration/production of hydrocarbons; APCC 20% Exploration/production of hydrocarbons; COTCO 5.17% Transportation of crude oil by pipeline; HYDRAC 97,57% Quality control in the hydrocarbons sector; TRADEX 54% Trading and export of crude oil and petroleum products; CNIC 41.50% Ship repair, consignment agency, onshore/offshore petroleum works, rehabilitation of oil platforms; SONARA 29.91% Crude oil refining and sale of refined products; COTSA 44% Crude oil storage; SCDP 15.00% Storage of petroleum products; IBC (in liquidation) 51% Steel and metal industry; CHANAS 25.94% 45.26% Insurance; and CHC 6.21% Leisure (hotel)

participation of MINFI (10.95%) and indirect participations of SNH (29.91%), CSPH (20.81%) and SNI (18.62%). It was inaugurated in 1981, and it is a topping reforming refinery. As such, SONARA supplies the local market with petroleum products including butane, super gasoline, jet, kerosene, gas oil, distillate and fuel oil. The refinery has a theoretical capacity of 2,100,000 tonnes/year. Although it was originally designed to process light crude (Arabian light). However, Cameroon currently produces but heavy crudes. For this reason, SONARA imports light crude oil from neighbouring producing countries like Nigeria and Equatorial Guinea to meet most of the country's demand for petroleum products. With the storage being entrusted to the Cameroonian Company of Petroleum Deposits (SCDP), majority owned by the State, which operates with twelve regional depots. Despite this, SONARA has suffered from a structural deficit for several years, resulting from domestic sales made below cost, which was only partially covered by budgetary subsidies. The residual deficit was made up by complicated measures to cancel debts with the State, securitisations and an accumulation of public arrears against the refinery. On this account, SNH was one of SONARA's suppliers until 2015. With the arrears for receivables not collected by SNH amounted to FCFA 28.3 billion as of 31 December 2017. Thus, it is observed that since 2015, SNH stopped all direct commercial relationships with SONARA, as it is no longer among SNH's customers, whether for the sale of the State share or its own share in the oil fields. As SNH has affirmed that no subsidy or funding has been awarded to SONARA since then.

ii. The framework governing the financial relations between the State and SOEs: In this vein, it is worth noting that the SOEs are governed by: *(1) Law No. 99/016 of 22 December 1999* on the general rules and regulations governing the Public Establishments. Which defines the two types of companies in the public sector as: A company with public capital (legal person under private law) with financial autonomy and a share capital fully owned by the State, one or more decentralised territorial communities or one or more other companies with public capital, to carry out activities of an industrial, commercial and financial nature in the general interest; and a semi-public company (legal person governed by private law) also endowed with financial autonomy and share capital held on the one hand by the State, decentralised local authorities, or companies with public capital and on the other hand, by legal or natural persons under private law. *(2) Law No. 2017/010 of 12 July 2017* on the general status of Public establishments, which sets the procedures for the creation, organisation and operation of public Establishments, as well as the restrictive measures and incompatibilities attached thereto. Although other specific laws may, as necessary, create other forms of public establishments. Therefore, the law applies to public establishments of the following types: Public establishment of an administrative nature; public establishment of a social nature; public hospital establishment; public cultural establishment; public scientific establishment; public technical establishment; public establishment of a professional nature; public economic and financial establishment; and special public establishment. Moreover, it is worth noting that a public establishment can take one or more of the forms referred to above - if its organic text determines that it takes multiple forms. Despite this, the organisation and operation of the special public establishments may derogate from the provisions of this law, especially when they are subject to International or Community Laws, like the Consular Chambers that are excluded. *(3) Law No. 2017/011 of 12 July 2017* on the general status of public companies sets out the rules for the creation, constitution, operation, dissolution and liquidation of public companies. Which applies to the company with public capital, and to the mixed economy company. With the mixed economy company being one in which the State, the public company or a decentralised local authority has a majority in the capital share. However, the semi-public companies in which the State, the company or a decentralised local authority has a minority in the capital share, are excluded from the scope of this law.

In terms of management, SOEs are placed under the management of a general assembly, a board of directors and executive management with the following responsibilities: *(1) The general assembly* approves the accounts of the company; the distribution of profit; appoints and dismisses the statutory auditors and the BoDs, and defines their remuneration. (*2) The Board of Directors (BoDs)*, which possess extensive powers to act on behalf of the company, to define and guide its general policy and assess its management, within the limits set by its corporate purpose, and subject to the provisions of Law No. 99/016. *(3) The management*, which is headed by the managing director responsible for the management and execution of the general policy of the company under the control of the BoDs. Intrinsically, all these functions are performed according to the provisions of the OHADA Uniform Act regulating limited liability companies. Although in practice, the line ministries are responsible for the overall oversight, while the BoDs and executive management design the strategies and implement the

operational plans. In theory, the arrangement gives the ministries the power to exercise overall supervision over the public companies for which they are responsible. On this account, to enhance governance, the draft budget of the SOE is prepared by the executive management and approved by the BoDs before the start of the fiscal year. With the approved budget being transmitted for information to the MINFI and the Minister responsible for the technical oversight or to the deliberative body of the decentralised local authority. Since according to the law, all non-financial agencies, including SOEs, must comply with the accounting rules of OHADA. As such, all the financial accounts must be reviewed by an auditor approved by CEMAC and validated by a general assembly within six months following the end of the financial year.

(iii) The specific governing financial relations between the State and SNH: In the list of SOEs highlighted above, it is worth noting that only SNH is identified as a company engaged in extractive activities on behalf of the State as per EITI requirement 2.6 (a). That being the case, in practice, the role of SNH is split into two activities which are subject to separate accounting: The 'SNH-Mandate' activity, which is intended for the management of State interests in the hydrocarbons sector, the commercialisation of State oil shares in oil contracts and the transportation of gas via the Bipaga-Mpolongwe gas pipeline; and the 'SNH-Operation' activity, which is intended for the exploitation for its own account of interests held in the oil fields jointly with the private operators. In this vein, SNH publishes separate financial statements for the 'SNH-Mandate' and 'SNH-Operation' annually that are verified by an auditor. With the aggregated financial statements, audit reports and activity reports published on the SNH website.[100] As such, it is worth examining how the results of the two separate accounts are prepared and distributed.

(1) For the SNH-Mandate, the revenues mainly consist of revenues from: The sale of oil and gas production share of the State in petroleum contracts; the sale of gas via the Bipaga-Mpolongwe pipeline; and revenues foreseen in petroleum contracts and collected on behalf of the State like the mining royalty, signature and production bonuses, additional oil levies and training costs. While the expenses incurred by the SNH-Mandate relate mainly to the State's share in oil production costs; the costs of purchasing gas from Perenco and commercialised it via the Bipaga-Mpolongwe pipeline; and other incidental costs related to the petroleum activities.[101] However, it is worth noting that no human resources costs are recorded in the accounts of SNH-Mandate - since the operating costs are borne by SNH-Operation. Thus, the balance of the aforementioned income, after the deduction of all expenditures related to its mandate constitutes the result of the SNH-Mandate. Nevertheless, the distribution of profit is made based on several elements like the result of the period, the amount of the cumulative and undistributed results, the available balance of cash, the needs of the activity and the budgetary needs of the State. Instinctively, the activity of SNH-Mandate is monitored quarterly by MINFI and the Ministry of Economy, Planning and Regional Development (MINEPAT). With the financial information relating to SNH-Mandate being presented in the form of a summary document called the "Table of Petroleum Operations", designed in collaboration with the IMF - which tracks all petroleum operations. The table is transmitted quarterly to these Administrations and presented within the framework of regular meetings with MINFI and MINEPAT through the Technical Committee for Monitoring Economic Programmes (CTS).[102]

(2) For the SNH-Operation, SNH carries out commercial activity for its own account. With such activity (SNH-Operation) being managed via separate accounts from those of the SNH-Mandate. This includes direct but marginal participation in oil production and exploration, as well as the management of the various interests in the oil companies and in other sectors not related to the extractive activity. For this reason, SNH-Operation's revenues mainly consist of revenue from the sale of its share of oil in petroleum contracts and the dividends received from equity participation. While the expenses of SNH-Operation include mainly its share in petroleum costs; staff and operating expenses; and other incidental costs related to the petroleum activities. However, the preparation of the budget and accounts, as well as the distribution of the results are carried out per the terms and provisions of Law No. 99/016 as described above. With the profits made distributed either to the State in the form of dividends or allocated to the reserves according to the budgetary needs of the State and the investment policy of the company.[103]

iv. The level of State participation and transactions related to SOEs: As highlighted above,

[100] http://www.snh.cm/index.php/fr/hydrocarbures-au-cameroun2/donnees-cle/statistiques.

[101] http://www.snh.cm/images/chiffres-cle/Statistiques2016.pdf.

[102] *Ibid.*

[103] *Ibid.*

the participation in the extractive companies is made through share capital or petroleum contracts, which are either direct or indirect through SNH. As such, the direct State participation in the petroleum sector is as follows: 100% in SNH for the management of State interests in the oil and gas sector; 20% in PERENCO RDR for the exploration/production of hydrocarbons; 20% in PERENCO CAM for the exploration/production of hydrocarbons; 20% in APCC for the exploration/production of hydrocarbons; and 5.17% in COTCO for the transportation of crude oil by pipeline. While the indirect participation through SNH in the oil and other related sectors are as follows: 97,57% in HYDRAC for quality control in the hydrocarbons sector; 54% in TRADEX for trading and export of crude oil and petroleum products; 41.50 in CNIC for ship repair, consignment agency, onshore/offshore petroleum works, rehabilitation of oil platforms; 29.91% in SONARA for crude oil refining and sale of refined products; 44% in COTSA for crude oil storage; 15% in SCDP for storage of petroleum products; 51% in IBC (in liquidation) for steel and metal industry; 25.94% in CHANAS for insurance; and 6.21% in CHC for leisure (hotel).[104] Indeed, it is essential to note that participation in these companies correspond to fully paid capital participation. By the same token, the EITI Standard requires that where the government or SOEs have provided loans or guarantees to extractive companies operating in the country, the details of such transactions need to be disclosed. However, despite this requirement, it is observed that the Treasury and SNH are yet to declare any transactions in this respect.[105]

A. Discerning hydrocarbon contracts in transport and barter arrangements:

As indicated earlier, the petroleum contracts as governed by the Petroleum Code of 1999, provide for the CC and PSC as the two types of contracts. With Articles 14 and 15 of the Code providing that these two types of contract can generate in-kind revenues, in line with Requirements 4.1 (b) and 4.2 of the EITI Standard. As such, for CC, the holder assumes the financing of the petroleum operations and disposes of the hydrocarbon extracted during the period of validity of the said contract, subject to the rights of the State to collect the royalty in kind; while for PSC, the hydrocarbon production is shared between the State and the operator. With the share of the State corresponding to its share in the "cost oil" and to its share in the "profit oil" that is distributed according to the terms of the contract. Which corresponds to the balance of the total hydrocarbon production after the deduction of the "cost-oil". The share of the State can be received in kind unless otherwise stipulated in the contract. From this, it is worth considering the three projects of transportation in the hydrocarbon sector that generates revenue for the State,[106] and the scope of the infrastructure provisions in the sector, in seriatim.

i. The Chad-Cameroon pipeline, which is originally a component of the Chad Export Project, aims to evacuate the production of crude oil from the Doba Region in Southern Chad to the international markets, by a consortium of oil companies composed of ExxonMobil, Petronas and Chevron. With the Project being concerned with the operation and maintenance of an oil pipeline of approximately 1,070 km, starting from the Doba oil fields, crossing the Cameroonian territory for nearly 890 km, from the northeast border with Chad up to the Atlantic Ocean, at Kribi. With the Cameroonian section of the pipeline being owned by a company established in Cameroon called Cameroon Oil Transportation Company (COTCO). That being the case, within the framework of the "Establishment Agreement" signed in March 1998 between the GoC and the COTCO company - the parties made viable commitments to allow the achievement of the Chad-Cameroon Pipeline Project. Since the transportation of the Chadian crude oil through the Chad-Cameroon pipeline generates revenue for the State of Cameroon in the form of transit fees, taxes and duties, as well as dividends received by the SNH - as a shareholder in the capital of COTCO.[107] Intrinsically, upon the signing of Amendment No. 2 to the COTCO Establishment Agreement in October 2013, the transit right was raised to USD 1.30 per barrel, compared to USD 0.41 previously. An addendum that foresees an update of the rate every 5 years, based on the average of the annual inflation rates recorded in Cameroon.[108]

ii. The Bipaga-Mpolongwe pipeline, which is a gas pipeline supplying natural gas since 25 February 2013, to the Kribi thermal power plant, with initial power of 216 megawatts. On this account, it is observed that under an agreement[109] with Perenco, SNH is committed to purchasing the entire gas production from the Sanaga Sud field. Whereby the production has to be routed via the Bipaga-Mpolongwe pipeline, before being sold to the KPDC

[104] *Ibid.*
[105] *Ibid.*

[106] See, The Steering and Monitoring Committee for Pipelines, available at http://cpsp.snh.cm/index.php.
[107] The participation rate as of 31 December 2017, is 5.17%
[108] http://cpsp.snh.cm/index.php
[109] See Article 10 of Law No. 2012/06 of the Gas Code (on the gas agreement in the downstream sector).

company at a price negotiated in the contract. As such, the margin resulting from the difference between the cost of the gas purchased and the proceeds from its resale is recognised in the profit and loss account of SNH-Mandate – which constitutes a return on the investments made for the construction of the pipeline. For instance, in 2017, the natural gas sales by SNH to KPDC increased, as they reached 10,523 million cubic feet (MMSCF). Therefore, the revenues generated for the State, including its share in the Sanaga Sud PSC, amounted to FCFA 20.373 billion, up by 6.69%.[110]

iii. The "Gas du Cameroon (GDZ)" pipeline to Douala (Logbaba), from which the Douala industrial companies are supplied with natural gas via the pipeline built by GDZ, a subsidiary of the British company - Victoria Oil & Gas, a partner of SNH in the project. With the gas extracted from the Logbaba gas field located in Douala. The natural gas distribution network to Douala Companies extends over a 50 km straight line serving 36 Companies. In this case, the total volume of gas produced and distributed from the Logbaba gas field until 31 December 2017, amounted to 344 million m^3, of which 51.90% was delivered to ENEO for electricity production from the thermal power plants of Bassa and Logbaba, which total 50 MW. The transportation of gas does not directly generate revenue for the State - but is remunerated via its participation in the Logbaba field within the framework of the PSC concluded with the GDZ. Despite this, the State's share in the project has never been paid to SNH due to a dispute with the GDZ.[111]

iv. The infrastructure provisions and barter arrangements, are agreements made between the State and the extractive companies involving the provision of goods and services (including loans, awards and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities.[112] Indeed, having perused the initiatives of governance in the hydrocarbon sector, it is worth considering that of the mining sector, to have a balanced picture of extractive governance in Cameroon.

1. The Summa of Mining Governance in Cameroon

The contribution of the mining sector to the economy of Cameroon remains marginal - with cement and aluminium as the main commodities. Besides, the minerals extracted in the country are the clay, diamond, gold, granite, kyanite, limestone, pozzolanic materials, quartzite, sand and gravel. The mineral processing facilities in Cameroon are mostly private - these companies include *"les Cimenteries du Cameroun"*m which produces cement from clay, limestone and pozzolanic materials, as well as *"la Compagnie Camerounaise de l'Aluminium (Alucam)"* that produces aluminium. Nevertheless, other minerals like iron, bauxite, cobalt, and zinc oxide remain undeveloped. With bauxite reserves located in the Adamawa Region (Minim, Martap and Ngaoundal), the Western Region near the town of Dschang (Fongo Tongo), and Cobalt reserves located in the eastern region near the town of Lomié. Moreover, the main gold deposits are concentrated in the northern part of the eastern region (Bétaré Oya, Ngoura, Garoua Boulai, Batouri, Béké and Ndélélé) and the Adamaoua region (Meiganga). Likewise, diamond deposits are concentrated around the city of Yokadouma/ Mobilong, in the eastern part of the country.[113] Despite this, a geological and geochemical mapping programme, and a geological and mining information system were launched in 2016 by the capacity building project in the mining sector (PRECASEM) with the support of the World Bank, which will allow Cameroon to develop and promote its mining potential.[114] As such, to have a better picture of mining governance in Cameroon, it is worth examining the following issues: The legal and institutional framework of the mining sector; the licensing, transfer and register of permits; the scope of participation of the State in the mining sector; and the viability of the artisanal activities.

A. Legal and Institutional Framework of Mining Governance:

i. The Legal framework of the mining sector: Explicitly, before 2016, the mining activities in Cameroon were mainly governed by Law No. 2001/001 of 16 April 2001 establishing the Mining Code, and its implementing Decree No. 2002/648/PM of 26 March 2002, as well as subsequent amendments introduced by Law No. 2010/011 of 29 July 2010 modifying and supplementing certain provisions of law No. 2001/001; Decree No. 2014/1882 of 4 July 2014; Decree No. 2014/2349 of 1 August 2014; Joint Order No. 003950/MINFI/MINMIDT of 1 June 2015

[110] http://cpsp.snh.cm/index.php
[111] *Ibid.*
[112] *Ibid.*

[113] See Strategic Environmental and Social Assessment of the Mining Sector in Cameroon, Book 1 - January 2016.
[114] http://www.irgm-cameroun.org/programme_geologie_ressources_minerales. More details on MINMIDT's strategy and sector perspectives can be found at the following link: http://wwwminmidtcm/strategie-ministerielle/

empowering the Artisanal Mining Support and Promotion Framework (CAPAM) to collect on behalf of DGI, the *ad valorem* tax of mineral substances and the monthly deposit of the Corporation Income Tax (CIT) payable by companies engaged in artisanal mining with a low level of mechanisation; and Order No. 001125 of 8 December 2016 setting the minimum monthly production threshold for companies engaged in mechanised artisanal gold mining. Equally, the companies carrying out mining activities are also subject to the OHADA Uniform Acts, as well as to the customs and exchange regulations applicable in the CEMAC region. However, with the advent of 2016, the GoC promulgated Law No. 2016/17 of 14 December 2016 establishing the new Mining Code, and subsequently Decree No. 2020/749 of 14 December 2020 setting the National Mining Company (SONAMINES). Indeed, according to the Mining Code, mining activities in Cameroon can only be carried out under a mining title or a mining agreement – whereby the holders of the mining title must prove domicile in Cameroon. Besides, the provisions of the agreement cannot derogate from the provisions of the mining Code. What's more, the Mining Code does not impose any restrictions on foreign investments, which are treated in the same way as local investments except for the artisanal activity that is reserved for Cameroonians. In addition to the Mining Code and uniform laws, mining taxation is governed by the General Tax Code[115], Law No. 96/12 of 5 August 1996 on a framework law for environmental management, Decree No. 2013/0171 of 14 February 2013 setting the procedures for carrying out environmental and social impact studies[116], and Order No. 0069 of 8 March 2005 setting the various categories of operations subject to an environmental impact study.[117] Moreover, the Mining Code awards the mining companies the stabilisation of the rates during the entire period of validity of an exploitation permit.[118]

ii. The institutional framework of the mining sector: The mining sector is also regulated and supervised by several governmental agencies including the MINMIDT. With payments from the mining companies being made to the government agencies placed under the supervision of MINFI. As such, the main governmental entities involved in the mining governance and their roles are as follows: *(1) MINMIDT*, which designs and coordinates the implementation of the mining policy. It has a right to oversight over all mining activities on the national territory including determining the areas for mining operations, authorising transfers of rights and obligations attached to mining agreements, authorising the prospecting activities, and approving the mining agreements.[119] *(2) Directorate of Mines (DM)*, which is placed under the supervision of MINMIDT, with the following mandate: implementing the national mining policy; monitoring the management and control of activities in the national mining sector; participating in mining exploitation control activities; and monitoring of State participation in the exploitation of mineral substances.[120] (3) *MINFI*, through these three agencies - DGI, DGD and Treasury, ensures the collection of taxes from the EI on behalf of the State and the municipalities.[121] *(4) Mining Cadastre Sub-Directorate*, which is placed under the supervision of MINMIDT, with the main tasks of examining the authorisation and renewal requests and preparing award, renewal and transfer orders for mining permits; developing and updating the mining cadastral map; keeping and preserving cadastral, geological and mining documentation.[122] *(5) CAPAM*, which was created in 2003 under MINMIDT as a project to play the role of coordination, organisation, facilitation, support, promotion, development and standardisation of artisanal mining. With its major responsibility being to channel the artisanal production of gold, diamond, sapphire, quartzite, tin, kyanite, rutile and other minerals in the formal sector of the State. As such, since June 2015, CAPAM is also having the responsibility of collecting the *ad valorem* tax on mineral commodities, the monthly deposit of CIT and the share of the State payable by companies operating in mechanised artisanal mining.[123] And *(6) the National Mining Company (SONAMINES)*, which is a public company with the State as its sole shareholder - though its shareholding may be open to other public or private entities. Its mission is to develop and promote the mining sector and manage the interest of the State in this field – with the hydrocarbons (under the SNH) and quarries (to be managed by the Councils as per the General Code of Decentralised Territorial Collectivities)

[115] http://www.impots.cm/uploads/Telechargement/CODE GENERALDESIMPOTS2017.pdf.

[116] http://www.snh.cm/index.php/fr/hydrocarbures-au-cameroun2/reglementation

[117] *Ibid.*

[118] http://www.minfigovcm/indexphp/impots-ettaxes-appliques/secteur-minier.

[119] http://www.minmidt.cm/.

[120] http://www.minmidt.cm/mines/services/.

[121] http://www.minfi.gov.cm/#.

[122] http://minmidtcm-gov.com/fr/2013-03-25-14-29-55/administrationcentrale/direction-des-mines/sous-direction-du-Maps-minier.html.

[123] http://www.minmidt.cm/fr/grands-projets/capam.html.

excluded from the scope of SONAMINES, which is placed under MINMIDT.

iii. The basic reforms of the mining sector: As highlighted above, the regulatory framework of the mining sector underwent a major reform at the end of 2016 with the release of Law No. 2016/01 of 14 December 2016 on the new Mining Code, which entered into force in 2017. With the new Code aiming to encourage and promote investments in the sector for a better contribution to the economic and social development of Cameroon. Based on this, the main reforms brought about by the new Code are as follows: *(1) For governance and transparency*, it recognises EITI as a vital element of mining governance, thus, obliging the permit holders to comply with EITI and the principles of transparency; it also recognises the right of access to geological and mining information; the introduction of conflict of interest measures prohibiting the exercise of mining activity by civil servants in the government administration and the personnel of government agencies under the supervision of MINMIDT; the introduction of the first legal framework relating to the communication of information on "Beneficial ownership" with the obligation for mining companies to communicate all persons holding 5% or more of shares or voting rights; the publication of acts of allotment, extension, renewal, transfer, withdrawal or relinquishment of an operating permit in the official journal and in the newspapers; and the preparation of a standard template of mining agreement in compliance with the provisions of the Mining Code. *(2) For mining policy and local development*, it has created several funds like the Mining Sector Development Fund, Restoration, Rehabilitation and Closure Fund for mining sites and quarries. It has also included "local content" obligations in the mining agreements and created a special local capacity development account, which will be funded by the mining companies through a new contribution of 0.5 to 1% of turnover, excluding taxes. *(3) For fiscal issues*, it provides a more favourable tax system by lowering the rate of the *ad valorem* tax on mining products fixed at 8% for precious stones and 5% for precious metals (Gold), instead of 20% and 15% foreseen in the 2015 Finance Law. Besides, it also provides for clear taxation for transactions on mining permits; the introduction of the "arm's length" principle to evaluate the expenditure and transactions on mining permits, and the obligation to audit the expenditure/transactions in the event of the sale of the mining permits; and the introduction of three limits to deduce interests on loans contracted from the partners (rate, loan amount, interest amount).

iv. Other regulatory reforms relating to mining governance: Concerning the mobilisation of mining revenues, the new Code improves revenue collection for mechanised artisanal mining, by introducing a minimum monthly production threshold for mechanised artisanal gold mining, through Order No. 001125/A/MINMIDT/SG/DM/DAJ/CAPAM of 8/12/2016 - whereby the minimum production threshold used in calculating taxes is set at a minimum of 50 grams of gold dust per mining machine per day of use. With the minimum number of days of use per machine being set at 20 days/month, while the copies of the monthly samples operated by CAPAM are transmitted to DGI, the Directorate of Mines, the Permanent National Secretariat of the Kimberley Process and the Regional Directorate of Mines. Likewise, the taxation of exports of raw mining products is now facilitated by Law No. 2016/018 of 14 December 2016 relating to the Finance Law, which reiterates the provision of taxation of exports of crude mining products to an export duty at 2% collected by the DGD. What's more, in line with the Mining Code, SONAMINES - which is a public company with the State as its sole shareholder has been created by a Presidential Decree, to develop and promote the mining sector and manage the interest of the State in the field, placed under MINMIDT. In addition, to enhance transparency and good governance in the EI, the GoC enacted Law No. 2018/011 of 11 July 2018 instituting the Code of Transparency and Good Governance in Public Finance Management, to ensure that all contracts between the government and the public or private companies, especially those with the extractive companies, are made publicly available. It also ensures the submission of the mining contracts to the regular control of the Jurisdiction of the accounts and the relevant Parliamentary Commissions - and makes legible and traceable the products of all revenues including those related to the natural resource development activities in a detailed and justified manner in the presentation of the annual budgets. Despite this, the challenge is that the implementing decree of the Transparency Code is still pending.

B. Breadth of licensing, transfer and register of permits:

Intrinsically, before 2016, the awarding and transfer of permits were governed by the provisions of Law No. 2001/2001 of 16 April 2001 as amended by Law No. 2010/011 of 29 July 2010. On this account, as per the Mining Code, any legal person under Cameroonian law wishing to exercise a mining activity must first have a prospecting permit or a mining permit. In this vein, the Code provides for the

following types of mining permits: *(i) Prospecting permit*, which is issued to carry out systematic and itinerant surface investigations by geological, geophysical or other methods using large areas to detect evidence or concentrations of minerals. The permit gives its holder a non-exclusive and non-transferable right, for a validity period of one year renewable. It is issued or awarded by the Minister of Mines after approval by the PRC. *(ii) Authorisation for artisanal mining*, which is the artisanal mining authorisation confers to its holder the exclusive right to prospect and extract minerals inside the mining area for a maximum depth of 30 metres, for a validity period of two years renewable - issued or awarded by the Regional Delegate of MINMIDT. *(iii) Research permit*, which is issued to conduct investigations to locate and assess mineral deposits and determine the conditions for commercial exploitation. With the permit giving its holder an exclusive transferable right, for a validity period of three years renewable two times for two years, awarded by an order of the Minister of Mines after approval by the PRC. *(iv) Exploitation permit*, which is issued for the extraction of solid, liquid or gaseous minerals by any process or method from the ground or under the surface of the ground. The permit gives its holder an exclusive transferable right, for a validity period of 25 years renewable by a 10-year period until the depletion of the deposit. It is also awarded by an order of the Minister of Mines upon the approval of the PRC. *(v) Small mine exploitation permit*, which is awarded under the same conditions as the exploitation permit with the condition of being made up of at least 40% of national interests, for a validity period of 10 years renewable by periods of four years until the depletion of the deposit. It is awarded by a Presidential Decree upon the opinion of the Minister in charge of Mine. *(vi) Temporary quarrying authorisation*, which confers on its holder, within the limits of the awarded area, the exclusive right to exploit the quarry, for a validity period of two years non-renewable. *(vii) Permanent quarrying permit*, which is a non-transferable permit, for a validity period of five years renewable indefinitely after a 3-year period. As such, both the temporary and permanent permits are issued by the Minister of Mines, after consultation with the relevant administrative authorities and the local communities.

Correspondingly, the Mining Code foresees the signature of a mining agreement when an exploitation permit is awarded that must include provisions relating to: The feasibility study prepared by the permit holder and proposals for the development of the project; requirement definition for the construction of the mine, commercial production and the related tax regimes; health, safety and environmental and cultural heritage protection rules specific to the proposed operations; relationship with local communities affected by mining development; obligations relating to employment, vocational training and social achievements; percentage of production to be devoted to local processing locale; relationship with suppliers and subcontractors; and the nature and methods of the possible participation of the State in a mining development covered by an exploitation permit. On this account, the Mining Code provides that only companies with adequate technical and financial capacities to carry out mining operations can access the mining sector. As such, in the case of competing requests, priority is given to the applicant who has the best proven financial and technical capacity. Despite this, the Code does not mention the tendering procedure for the award of mining titles.

Congruently, subject to cases of non-transferable permits as highlighted above, any transaction on mining permits is supposed to be addressed to the Minister in charge of mines, who has 45 days to exercise the pre-emption right of the State. In the event of a transaction involving more than 50% of the shares, the approval decision is conditioned to the payment of a progressive bonus, which represents the payment made on the capital gain made during the transaction. Similarly, the expenses incurred and declared in this context need to be approved by the Minister in charge of mines. For this reason, the request for approval must be sent to the Minister of Mines in triplicate - including a stamped original. Nonetheless, if the applicant is an individual, the request is supposed to include the address, nationality and proof of identity of the applicant. But if the applicant is a company, the request should include: The statutes of the legal person, the latest Annual Report, or a bank statement of financial assets; and the list of members of the Board of Directors, the list of people empowered to sign on behalf of the company, their nationalities and their respective addresses. In addition, the holders of a mining permit or an authorisation must inform within a period not exceeding thirty (30) days, the Minister in charge of mines of any modification relating to its statutes or the structure of social capital.[124]

Concisely, as per the provisions of the Mining Code, any act relating to a mining title must be recorded in a register called "Register of mining titles". With such

[124] The details of the transfer procedure can be found in the MINMIDT Guide available at the following link: http://www.minmidt.cm/wp-content/uploads/2017/06/GUIDE-DE-LUSAGER134.pdf.

register being marked and initialled by the Director in charge of mines - mentioning all the requests for registered mining titles, all subsequent allocation, renewal, withdrawal and expiration decisions, and any other information deemed necessary. Besides, there is a "Computerised Mining Cadastre System (CMCS)" in place to guarantee the management of mining data. With the cadastre being, from February 2017, a *"Flexi cadastre"* database that allows online consultation of data on mining titles.[125] In this vein, the data available online include: The type of permit; the identity of the holders of the mining permit; the date of the request; the date of the award; the expiration date; the area and geographic coordinates; and the extracted minerals. Despite this initiative, it is observed that the dates of the requests for old titles and artisanal mining permits were not systematically entered. For this reason, work is still in progress to collect the missing data and update the cadastre database, since all the titles have an application date or a renewal date.

C. Stretch of State participation in the mining sector:

The participation of the State in the mining sector is governed by the provisions of the Mining Code, which foresees the following three types of participation: *(i) The systematic and free participation* in the exploitation companies that can not be diluted in any event of an increase in share capital; *(ii) the additional optional participation* that can not exceed 20% of the capital of the exploitation companies – with the State being subject to the same rights and obligations as the private holders of the mining permit; and *(iii) the pre-emption right of participation* by the State on the sale of shares in companies holding mining permits. From this, it is worth noting that such participations allow the State to receive dividends based on the profits and decisions of the General meeting of the company. Despite this and given the level of participation of the State - which is only 10-20%, the GoC does not have sufficient power to influence the investment or dividend distribution policy of the company. In this light, it is worth considering the role of the State-owned enterprise, and the issues of State participation, loans and guarantees.

On this account, Requirement 2.6 (a) of the EITI standard defines a State-owned enterprise (SOE) as an enterprise that is wholly or majority owned by the government engaging in extractive activities on behalf of the government. A definition that seems to be in line with the provisions of Law No. 99/16 of 22 December 1999 on the general status of the Public Establishments and Companies in the public and para-public sector. Similarly, Law No. 2017/010 of 12 July 2017 on the General Statute of Public Establishments, and Law No. 2017/011 of 12 July 2017 on the general statute of the public companies, also consider that any company where the State holds at least twenty-five per cent (25%) of the capital as a public sector enterprise is an SOE. Based on this, in Cameroon, it is observed that the only company that has met such a definition is the *"Societe National d'Investisement (SNI)".* The SNI is a wholly owned government company that manages the participation of the State in several industries, including the mining sector. Despite this, it is worth noting that SNI is not directly engaged in extraction activities, as such, does not fall within the scope of the definition of Requirement 2.6 above.

Notwithstanding, the participation of the GoC in companies of the mining sector is either direct or indirect through the SNI as follows: In the C&K Mining[126], the participation is direct with 10% shares, while in CIMENCAM, its participation is equally direct with fully paid shares of 43.1%. In addition, **concerning guarantees and loans, t**he EITI Standard provides that where the government or SOEs have provided loans or guarantees to the extractive companies operating in the country, the details of such transactions must be disclosed. Based on this, it is observed that the Treasury and SNI are yet to disclose the transactions of loans or guarantee agreements. Likewise**,** the EITI Standard provides that quasi-fiscal expenditures include agreements whereby the SOEs undertake public social expenditure outside of the national budgetary process. As such, in the absence of an SOE in the mining sector, quasi-fiscal expenditures are not applicable. This is because the EITI Standard requires the EITI Committee to ensure that the reporting process fully addresses the role of SOEs, which includes the significant payments they receive from the extractive companies and the transfers between the SOEs and other government entities. For this reason, the Committee has agreed to include in the reconciliation scope, dividends collected by SNI from the mining companies.

D. Viability of the artisanal activities:

As a matter of fact, artisanal mining is governed by the provisions of the Mining Code and its

[125] http://portalsflexicadastrecom/Cameroon/fr/.

[126] *Direct interests in C&K Mining have not been confirmed by the Investments and Contributions Division (MINFI). According to the Deputy Director of Mining Activity (MINMIDT), the Minister of Mines ordered an on-site mission to note the operator's absence.*

implementing regulations. As such, artisanal exploitation can only be carried out in Cameroon if the person possesses an "individual prospector card" or an "artisanal exploitation authorisation". Besides, the regulation also distinguishes for fiscal reasons, the small-scale artisanal exploitation where the material used remains limited to a shovel loader, three excavators and a washing centre. However, beyond this limit, the artisanal activity engaged within the framework of a technical and financial partnership contract with a natural or legal person under Cameroonian law is subject to the legislative provisions of the industrial mine or the small mine. That being the case, in practice, artisanal activities are the most common type of mining for gold and diamond commodities in Cameroon. This is because the activities are carried out by artisans or peasants in an artisanal way, without mechanisation, or in collaboration with technical-financial partners. As such, artisanal mining is considered the most important activity in the mining sector in terms of the people involved. Despite this, it is worth noting that such activities suffer from problems relating to the environment and security, among other things, in certain areas due to the informal nature of most of the activities. A situation that is currently worrying since MINMIDT does not have a comprehensive mapping of operators and indicators in the sector due in particular to the decentralisation of the management of authorisations at the level of Regional Delegates and the difficulties in monitoring this type of activity. In this vein, it is worth considering the two viable supervision projects for artisanal activities.

Firstly, in order to promote and supervise the artisanal mining sector, CAPAM was created in 2003, and placed under the Minister of Mines as a project to play the role of coordination, organisation, facilitation, support, promotion, development and standardisation of artisanal mining. On this account, CAPAM is responsible for channelling the artisanal production of gold, sapphire, quartzite, kyanite, rutile and other minerals in the formal circuit of the government. As such, in 2014, Decree No. 2014/2349 of 1 August 2014 introduced little-mechanised mining artisanal for all artisanal mining activities, with the equipment limited to a loader shovel, one to three excavators and a cleaning centre. Likewise, the Decree entrusted CAPAM with the responsibility to monitor the semi-mechanised artisanal activities and collect the State's share in the production at the rate of 12.8%, and the CIT advance payment at the rate of 2.2%, which are all collected in kind. By the same token, a joint MINFI-MINMIDT Decree of 1 June 2015 also mandated CAPAM to collect the *ad valorem* tax and to proceed with the collection of the arrears relating to the period from 1 January to 1 June 2015 not collected by DGI. Nevertheless, since 1 January 2017, following the publication of the new Mining Code on 14 December 2016, the various levies above were replaced by the collection of a single synthetic tax of 25% of the production of the companies engaged in the low mechanised artisanal mining. As the collection is carried out in kind based on the production noted by CAPAM at the operating sites, with the collected volumes being transferred to MINFI (the Treasury based on FCFA 18,500/gram). For this reason, the main activities of CAPAM involve channelling gold from artisanal mining; a collection of synthetic tax; and the retrocession of gold to MINFI.

Secondly, in order to enhance transparency in mining activities, Cameroon joined the Kimberley Process in 2012. As such, the structure responsible for implementing the principles and requirements of the process in Cameroon is the Permanent National Secretariat of the Kimberley Process (SNPPK) - created by Decree No. 2011/3666/PM of 2 November 2011, establishing, organising and operating the Certification System for the Kimberley Process. Although it is placed under the authority of the Minister in charge of Mines, however, it is directed by a Permanent National Secretary, who is assisted by a Deputy Permanent National Secretary. With the purpose of the process being to improve the traceability of uncut diamonds from mines; create a more transparent and better-identified diamond trade; increase State revenues and attract foreign currencies. As such, for instance, the SNPPK exported in 2017 a volume of 1,294.63 carats of uncut diamonds for a total value of CFAF 60 million.[127]

3. The Features of Management of the Extractive Revenue in Cameroon

Generally, before considering the features of managing the revenues of EI, it is worth providing a rundown of the preparation and execution of the budget in Cameroon, governed by Law No. 2007/006 of 26 December 2007 on the financial regime of the State. As it provides that the State budget must comply with the following general principles: All revenues and expenditures must be included in a single document, titled the 'General Budget'; all revenues should be received without any compensation between receipts and expenditure; all revenues ensure the execution of all expenditures; and no revenue should be issued and recovered, nor any expenditure incurred or ordered on behalf of the State, without having been authorised by a finance

[127] Source: Kimberley Process in Cameroon

law. In this light, to have a better overview of the features of managing the extractive revenue, it is worth considering the national public financial management system, the national budget preparation and audit process, the extractive revenue collection and allocation, and the SNH direct operational activities.

A. National public financial management system:

Explicitly, the budget describes the resources and uses of the State authorised by the finance law, in the form of revenue and expenditure, within the framework of a budgetary exercise – with the fiscal year covering one calendar year. As such, the State budget is made up of the general budget, supplementary budgets and special accounts. The Parliament and Government of Cameroon are the main structures responsible for overseeing the management of the financial system of the State. Since the Government establishes the projections of receipts and expenditures in the finance bills before presenting them to the Parliament, which authorises the collection of the receipts and uses the charges proposed by the Government within the framework of the finance law of the year. Besides, it is also the body responsible for monitoring the execution of the said law. On this account, the State keeps budgetary accounts intended to verify the compliance with the Parliamentary authorisation by the Government, and to measure the evolution of the assets of the State. The accounts of the State include the results of the budgetary accounts and those of the general accounts, which must be regular, fair and give a true picture of the execution of the budget and the evolution of the State assets and its financial situation. In this vein, as per the principle of a single cash account under the public finance law, all revenue ensures the execution of all the expenditures and public resources are all, whatever their nature and recipient, collected and managed by the public accountants. Which are deposited and kept in a single account opened in the name of the Treasury at the Bank of Central African States (BEAC). With the State budget revenue is often presented under the following four titles: Tax revenue; donations and legacies; social security contributions; and other income.

B. National budget preparation and audit process:

The development of the national budget goes through the following five major stages: *(i) The planning stage*, whereby the Budget is prepared from a prospecting and planning process. With the Budget reflecting, in the short and medium terms[128], the public policies defined in the longer term by the "Vision 2035", the Strategy Document for Growth and Jobs (DSCE)[129], sectoral and ministerial strategies. *(ii) The preparation stage*, with each Ministry drawing up its own budget. As such, all budgets are compiled in an Administration Performance Project (APP) – which is then submitted to MINFI, responsible for budgetary arbitrations and the consolidation of data to establish the final draft finance law. *(iii) The preparation of the finance bill*, which is done by MINFI, who then transmits the PPAs of each Ministry to the Inter-ministerial Committee for Programme Validation. On this account, once these PPAs are validated, they are collected by the Minister of Finance in order to constitute the finance bill that is submitted to the Prime Minister. *(iv) The validation of the finance bill*, which is done by the Prime Minister, who transmits the bill to the PRC, who in turn forwards it to the Parliament. And *(v) The examination of the finance bill*, which is done by the Parliament that reviews the budget bill in two stages - the programmes, then the means of their execution. Thus, once it is adopted, the PRC promulgates it.[130]

Correspondingly, upon the promulgation of the finance law, the Budget is executed by all the relevant Ministers. With the execution consisting essentially of the operational implementation of the actions contained in each programme. The action is the elementary component of a programme, which is associated with specific and explicit objectives measurable by performance indicators. The execution must be guided by the constant search for effectiveness and efficiency in compliance with the laws and regulations in force. In this sense, the budget is subject to the control of the following structures: *(1) The General Inspections* that control the execution of the programmes internally, within the Ministries. For instance, the MINFI and MINEPAT control brigades are responsible for monitoring the adequate implementation of the finance law. *(2) The Supreme State Control (CONSUPE),* which is the supreme control institution in particular in the performance of public administrations. *(3) The Parliamentarians* also control the execution of the budget, as they can investigate programmes at their discretion, according to the procedures set out in the state's financial system. *(4) The Audit Bench of the Supreme Court* is the supervisor of the State accounts and the proper execution of public expenditure. Its mission is materialised in particular by the preparation of three

[128] http://cm.one.un.org/content/dam/cameroon/docs-one-un-cameroun/2017/vision_cameroun_2035%20(1).pdf

[129] http://cm.one.un.org/content/dam/cameroon/docs-one-un-cameroun/2017/dsce.pdf

[130] Cameroon EITI Report 2017, p. 69.

types of reports: The annual activity report, the report on State accounts and, if necessary, thematic reports (on advance funds, judiciary costs, spontaneous payments, provision of funds, etc.). Its reports are public and can be viewed on its website.[131]

C. Extractive revenue collection and allocation:

In this connection, in line with the provisions of Law No. 2007/006 of 26 December 2007 on the financial regime, which establishes the principle of the single cash account of the Treasury. The latter is the unique collector of the State revenues, including those relating to the decentralised local authorities and the legal persons under public law. Thus, it is a one-stop shop for government cash-in and cash-out operations. For this reason, the payments from the extractive companies are made in cash with the following three main government agencies: *(1) Directorate General of the Treasury and of Financial and Monetary Cooperation (DGTCFM),* for dividends from State participations, transfers from SNH-Mandate as income from the sale of government share in the production of hydrocarbons, as well as under other payments it receives from hydrocarbon companies under the petroleum contracts*; (2) Directorate General of taxes (DGI) / Department of Large Companies (DGE),* for taxes governed by the General Tax Code and mining taxation; and *(3) DGD,* for customs duties, transit duties and customs fines.[132] Nonetheless, it is worth noting that there are three exceptions to the principle of the single cash accounts of the Treasury, which are: The income in-kind corresponding to the government share in the PSC, the sales of which are sold by SNH on behalf of the State. With the sales revenues, as well as royalties and bonuses paid by the hydrocarbon companies collected first by SNH (Mandate), before being transferred to the Treasury after deducting the operational costs shared with the private oil companies; the SNH may incur certain expenses on behalf of the State from oil revenues collected as per the previous point, with these 'direct operations' by the SNH being deducted from the amounts due by SNH in respect of the revenue to be transferred to the State; and for semi-mechanised artisanal mining, the collection of the revenues is done in-kind by CAPAM, with the latter transferring the collected in-kind revenues to MINFI before its allocation to the beneficiaries provided for by the regulations. From this, to have a better view of the management of the extractive revenue, it is worth examining the sub-national transfers and revenues allocated to special funds and the modalities of transfer and revenues allocated to the special funds.

i. The Subnational transfers and revenues allocated to special funds: The review of the taxation framework and the practice governing the EI, shows the following three transfer mechanisms as per Requirement 4.2 (e) of the EITI Standard. As such, Article 239 of the 2015 Finance Law provides for the compensation of the communities affected by mining activities. With such amount of compensation being deducted from the *ad valorem* tax, the extraction tax, and the royalty on the production of spring water and mineral water according to the following allocation keys: 25% for the territorially relevant municipality, 5% to MINMIDT, 5% to DGI, and 65% to the Treasury.[133] Despite this, there is no interconnection between the tax and accounting management information systems, thus, only DGE provides data on tax transfers collected from the companies registered at its level. Nonetheless, the review of the accounting records of transfers made to the municipalities raises the following observations: *(1) Transfers are assigned by DGI* at the time of tax collection, as the allocation is made directly to the account of the relevant municipality. *(2) Allocations by DGI* made in accordance with the distribution keys provided for by the regulations. With the relevant municipality account being identified based on the company declaration, which specifies the region where the mining project is located. But in the absence of a declaration from the company, the allocation is made to a suspense account, with the settlement of the suspense account being done after verification by DGI. *(3) Allocation can be carried out automatically* when issuing receipts for the Tax Centres connected to the "MESURE" system – as it enables that the allocation of the DGTCFM is booked on the Treasury system 'CADRE'. With the booking being done with aggregate figures without specifying the nature of the allocation in the accounts of the municipalities. However, for non-connected centres, the booking is done manually but not repeated on the DGI system 'MESURE'. As these allocations are also booked on the 'CADRE' of the Treasury without specifying the nature of the allocation in the accounts of the municipalities. Although the allocations for transfers to the municipalities seem to be in accordance with the allocation keys provided for by the regulations, subject to human error. Nevertheless, in practice, it is difficult to verify the compliance of

[131] http://chambredescomptes.net/index.php?option=com_content&view=frontpage&Itemid=1.

[132] Starting on 1 January 2015, the collection and control of taxes, fees and charges from the mining sector are the responsibility of the Directorate General of Taxes (see Article 239 of the Finance Law of 2015).

[133] Cameroon EITI Report 2017, p. 71.

transfers for the following reasons: The data provided by DGI are only based on the data available on 'MESURE' and thus, do not include collections made at non-connected tax centres; and due to the lack of data integration between the DGI and the Treasury systems, since the allocations made at the Treasury level are carried out in aggregated figures, making it impossible to identify the transfers of the extractive revenues for the benefit of the municipalities.

ii. The modalities of transfer to the special funds: In this vein, Article 2 of Decree No. 2007/1139 of 3 September 2007 setting the terms for issuing, collecting, centralising, distributing and repaying municipal additional cents (CACs) provides for the distribution of additional cents from CIT and Tax on profits (IRCM) collected from the extractive companies at a rate of 10%, as follows: 70% to the relevant municipalities, district and urban communities; 20% to special Inter-municipal Intervention Fund (FEICOM); and 10% to the Treasury.[134] With the DGI and DGE having confirmed that the share of CACs is supposed to be transferred to the municipalities where the head office of the extractive company is located and not to the municipality where the extractive activity is carried out. Likewise, for the artisanal sector, the current regulation[135] provides for rules for sharing tax revenue collected in kind by CAPAM for semi-mechanised artisanal exploitation. With the allocation being linked to the *Ad Valorem* Tax (TAV), advance payment on CIT and the State share on production detailed as follows: 25% to the relevant municipalities, 5% to the tax authorities (DGI), 5% to MINMIDT, and 65% to the Treasury.[136] For this reason, as per Article 28 (3) of the 2016 Mining Code, the procedures for collecting and allocating the government share, between the Treasury, the Mining Sector Development Fund, CAPAM, the municipality with territorial jurisdiction and the neighbouring communities are set by regulation. Although the promulgation of the implementing decree governing the allocation of the government share is still pending. Equally, with the promulgation of Decree 2014/2349/PM of 1 August 2014, the transfers of CAPAM to MINFI were not subject to any repayment to the various beneficiaries, including the municipalities. But pursuant to the MINFI directives, a mixed MINFI-MINMIDT Committee (CAPAM) was set up in July 2018, to carry out the inventory work of transfers by CAPAM to MINFI from 2012.[137] Besides, the committee is also working on the gold stock available at MINFI to render the purity level accepted by the London Bullion Market Association.[138] Thus, at the end of the inventory work, the committee prepared a detailed statement of the municipality and the entity benefiting from the tax collections. By the same token, certain revenues collected by the government agencies are allocated to special accounts which include: The contribution to Credit Foncier du Cameroun (CFC), which is a parafiscal tax collected by the tax administration and paid to CFC. With the latter aiming to provide financial assistance for projects relating to housing. For instance, the payments from the EI allocated to CFC totalled FCFA 593,194,884 in 2017.[139] Equally, there is the contribution to the National Employment Fund (FNE), which is a parafiscal tax managed by the services of DGI - with the payments from the EI allocated to FNE totalling FCFA 394,325,521 in 2017.[140]

A. SNH direct operational activities:

Ardently, the budget law for each fiscal year provides for and authorises SNH to collect petroleum royalties from the production and sale of hydrocarbons on behalf of the GoC. As such, each month, a part of these resources is transferred to the Treasury account at BEAC and recorded by the Central Accounting Agency of the Treasury (ACCT) as the State budget revenue. With the other part of these resources being spent by SNH as direct operations from which certain administrations operate certain security expenditures included in the State Budget. On this account, direct operations are initiated following the request of the PRC for the benefit of certain related structures like the Ministry of Defence, the Ministry of Justice, the General Directorate of External Research (DGRE), the General Directorate for National Security (DGSN), Directorate for the Presidential Security (SDP) and the State Secretariat for Defence (SED). For this reason, at the end of each month, a working session between representatives of SNH, the DGTCFM, the DGI and the General Directorate of Budget (DGB), is held in order to check the expenses that have been paid by SNH as direct operations. From this, a report is prepared and sent to DGTCFM for booking the revenue and expenditure. Thus, on the basis of this report and the statement of direct operation expenses, ACCT posts the advance

[134] *Ibid.*
[135] See Article 28 of Law No. 2016/17 of 14 December 2016.
[136] Cameroon EITI Report 2017, p.72.
[137] All direct collections by CAPAM are transferred in full to MINFI.
[138] Cameroon EITI Report 2017, p.73.
[139] *Ibid.*, p. 75.
[140] *Ibid.*

payments in the account 'expenses to be adjusted', with the counterpart posted in the account 'SNH Royalty', in compensation. With the request for budget coverage being sent to the DGB for the preparation of the adjustment booking to allocate the expenses in the chapters of the corresponding administrations, or the operational chapter account 6189 - other remuneration for external services. For instance, in the year 2017, these expenses were recorded in operation account No. 6189 and investment account No. 2279 - Technical equipment, machines and installations specific to the service function. With the relating adjustment commitments being charged to the common investment chapter (Chapter 94). Upon receiving the commitment order, the Accounting Officer clear the provisional account. The SNH carried out transfers and operations for the benefit of the Treasury for a total amount of FCFA 316.1 billion.[141] With the reconciliation of transfers made during 2017 by SNH to the benefit of the Treasury, having a balance of FCFA 7411 billion. While the SNH Royalty opened in the accounts of the GDTFMC shows a difference of FCFA 3.340 billion.[142] From this, the SNH direct operations by the beneficiary institution for the year 2017, were communicated by the SNH.[143] As such, in a letter of intent to the IMF in June 2017[144], the GoC committed to reducing direct operations to 50% of the amount of SNH royalty for 2017 - and to provide sufficient budget provisions to cover all security spending for the subsequent years. Equally, the GoC also commits to record all hydrocarbon revenues, as well as the amount of direct operations in the State Financial Operations Table.

[141] Source: DGTCFM. See Annex 9 to this report. The SNH direct transfers to the Treasury were FCFA 145,505 billion and for direct operations FCFA 169,589 billion.

[142] *Ibid.,* The Reconciliation of SNH transfers with Treasury accounts - Transfers declared by SNH to the Treasury is CFAF 316,094 billion, a balance of Account CFAF 7411 billion – with SNH Fee in Treasury Accounts being CFAF 319,434 billion.

[143] The SNH direct operations by beneficiary institution amounts are as follows in Billion/CFAF: General Secretariat of PRC - 9,703; Cabinet Civil of PRC - 12,981; Presidential Security Directorate of PRC – 489; Presidential Guard of PRC - 2,875; General Staff of PRC – 982; State Secretariat for Defense – 800; Ministry of Justice – 288; Directorate General for National Security – 800; Ministry Delegate to the Presidency in charge of Relations with Assemblies – 500; Prime Minister – 172; Department of Defense - 30,119; Rapid Intervention Battalion of PRC - 109,108. See Cameroon EITI Report 2017, p. 76. Source: SNH and DGTCFM.

[144] https://www.imf.org/External/NP/LOI/2017/CMR/fra

4. The Drift of Accountability and Disclosure in the Extractive Industries

A. General accounting framework and audit practices:

Explicitly, Cameroon is one of the 17 Member States of the OHADA, which aims to promote and strengthen the legal environment of the economic operators. In this vein, OHADA establishes common business laws for its Member States, including accounting standards, unified trade laws and other legislative standards which, once adopted, become national laws in each Member State. From this, the most important ones are the OHADA Uniform Act on Commercial Companies and Economic Interest Group (UACCEIG) and the OHADA Uniform Act on Accounting, which oblige the proper preparation and presentation of accounting information. As such, in 2001, OHADA imposed the use of the OHADA accounting system, which was different from the International Financial Reporting Standards (IFRS) - a three-level system that obliges companies to prepare complete or abbreviated financial statements according to their size and provides the basic legal framework for accounting. However, owing to the lapses of such an OHADA system, it launched a review of its acts to converge its accounting system to IFRS in 2016, with the new Uniform Act on Accounting Standards still being finalised. Similarly, in 2015, the National Order of Chartered Accountants of Cameroon adopted the French version of the International Auditing Standards (IAS). This was followed by the publication of Regulation No. 1/2017/CM/OHADA[145], to harmonise the accounting and auditing practices in OHADA zone. This enables that professionals carrying out legal or contractual audits in Cameroon must comply from January 2018 with the IAS published by the International Federation of Accountants (IFAC).

In this connection, CEMAC has also published Directive No. 02/11-UEAC-190-CM-22 on the general rules on public accounting, which aimed to align the public sector accounting standards with best practices and international standards. This makes the GoC to be responsible for implementing the public sector accounting standards. With the GoC changing its accounting system in 2007, without adopting the international public sector accounting standards (IPSAS). For this reason, it is worth noting that **the auditing and control of the accounts of the extractive companies must be done as per the provisions of the OHADA Uniform Acts. Since the** OHADA UACCEIG provides that the auditing of

[145]http://www.ohada.com/content/newsletters/3573/Reglement-n-012017CMOHADA-fr.pdf

accounts must be compulsory for all public companies and limited liability companies if one of the following three thresholds is achieved: Share capital is greater than FCFA 10 million; turnover is more than FCFA 250 million; and the permanent workforce is more than 50 people. On this account, Article 695 of the OHADA UACCEIG provides that the audit must be carried out by an external auditor selected from Chartered Accountants in Cameroon. Nonetheless, the a**uditing and control of the accounts of the public sector are carried out by the** Audit Bench of the Supreme, which is responsible for controlling and auditing public accounts, including those of the public and para-public entities. In this sense, it also has jurisdiction over any other matter expressly assigned to it by law.[146] For this reason, its Annual Reports are public and available on its website.[147] Moreover, the work of the Bench is carried out on the basis of the procedures laid down in its constitutive act, international practices, and the International Organisation of Supreme Audit (INTOSAI) standards[148].

B. Paradox of the disclosure of beneficial ownership and contracts:

i. The disclosure of beneficial ownership: Although Cameroon does not have a specific legal framework for the disclosure of beneficial ownership (BO) data - however, the disclosure of BO data through EITI Reports has been a practice since the 2012 EITI Report. In this regard, the new Mining Code of 2016 introduces a legal framework relating to the publication of BO in the mining sector, subject to an implementing decree, which would specify the terms of implementation. With the new Code obliging the mining and quarrying companies (holder or applicant for a mining title), as well as their direct subcontractors, to publish the identity or identities of all entities having interests in the mining title, in particular any person estimated to control the company or holding more than 5% of voting rights or profits. Equally, the new Code also obliges these companies to publish the identity of their directors and senior executives, as well as the list of their subsidiaries, their links and the jurisdiction in which they operate.[149] As such, in accordance with Requirement 25(i) of the EITI Standard, the EITI Committee has agreed to disclose the data on the BO of companies selected in the 2016 reconciliation scope. With the data being collected using a reporting template including the identification of beneficial owners, politically exposed persons and level of control for the purpose of the EITI declaration. In this case, the EITI Committee defined a "Beneficial Owner" as any person who ultimately owns or controls the client and/or the natural person for whom a transaction is executed, or activity carried out. From this, beneficial owners include at least: (i) The natural person or persons who ultimately own or control a legal entity, through possession of direct or indirect control of a sufficient percentage of shares or voting rights in the legal entity - including through bearer shares, other than a company listed on a regulated market, which is subject to disclosure obligations as per the current legislation or equivalent international standards. A 5% or more of the shares or voting rights is proof of ownership or control by participation, which applies to any level of direct or indirect participation. (ii) If it is not certain that the persons referred to in (i) are the beneficial owners, the natural person or persons are those who exercise control over the management of the legal entity by other means.

ii. The disclosure of contracts: Despite the innovation of governance in the EI in Cameroon as elaborated above, it is worth noting that some challenges still exist with respect to the legal framework governing the EI, as it does not provide for measures to disclose contracts concluded with holders of mining and petroleum permits. Equally, although the content of the mining and petroleum contracts is specified by regulations, the templates used are not formalised by legal texts. As such, in order to ameliorate the situation, the GoC has undertaken some actions to improve the transparency of contracts with, the publication by SNH of a template contract in the petroleum sector.[150] In addition, the GoC has also adopted the Code of Transparency and Good Governance in the management of public finances, which provides in particular: The obligation to make public contracts between the Administration and public and private companies, especially those exploiting natural resources; and the submission of the mining and petroleum contracts to the regular control of the Jurisdiction of Control of Accounts and the relevant Parliamentary Committees. Despite this, it is not clear whether these measures will have retroactive effects, although they can be interpreted as a commitment by the GoC to make all contracts publicly available. This is because the framework governing the EI has not

[146] See Article 41 of Law No. 96/06 of 18 January 1996 of the Constitution of Cameroon as amended.

[147] http://www.chambredescomptes.net/index.php?option=com_content&view=article&id=47&Itemid=75

[148] http://www.intosai.org/fr/sur-lintosai.html.

[149] See Article 145 of the new law N ° 2016/01 of 14 December 2016 on the Mining Code.

[150] http://www.snh.cm/ReglementationDesHydrocarbures/Contrat-type-CPP-en-francais.pdf.

changed that much with respect to the disclosure of contracts. Since the only confidentiality provision identified is in Article 105 of Decree No. 2000/465 of 30 June 2000 setting out the implementation modalities of Law No. 99/013 of 22 December 1999 relating to the Petroleum Code. With the provision only referring to data collected by the authorities from the contract holder and relating to documents, reports, statements, plans, data, samples and other information relating to the oil field, but does not deal with the petroleum contract itself. Although in practice, the mining and petroleum contracts have not been published – especially, since the implementation of Article 6 of the Code of Transparency and Good Governance, regarding the disclosure of contracts is still pending the release of the implementation regulation setting out the terms of implementation, in particular with regard to contracts in force before the promulgation of the law. In addition, Requirement 3.12.a of the EITI Standard encourages the publication of contracts and requires that EITI conciliation reports present government policy on the disclosure of contracts and licenses fixing the conditions for exploration and exploitation of the extractive resources. With Requirement 3.12.b of the EITI Standard requiring the inclusion of relevant legal provisions, the actual disclosure practices and planned or ongoing reforms. Despite this, the major challenge in monitoring social expenditures in Cameroon is the confidentiality surrounding the extractive contracts. Since the lack of public information can lead to the company's social expenditures appearing as voluntary actions. As most of such actions are undertaken without proper consultation with the affected community. This is because the confidential nature of the contracts inhibits the effective monitoring of the mandatory social expenditures as mandated by the EITI Standards. Despite this, the companies are ready to provide information on their social expenditures and concrete projects in the field. With the primary purpose of documenting and communicating such activities being to improve their image with the general public. A situation which is coupled with the fact that all social actions are presented as voluntary because the legal and contractual obligations are not in the public domain. For this reason, it is worth noting that social expenditures can be mandatory when prescribed by law or in the contract. Although generally, the contract is more relevant for assessing the voluntary or mandatory nature of the social actions of the companies - which requires the proper implementation of the EITI Standards.

CONCLUSION

Succinctly, Cameroon is rich in natural resources, the exploitation of which has an impact on the national economy. Its EI plays a large role in its domestic and international affairs. Thus, to avoid resource curse outcomes, greater transparency, accountability and oversight are required. For this reason, while the country has made a conscious effort to bring transparency and accountability to the EI over the last 10 years, more needs to be done, especially with the implementation of EITI and better access to information. Since it has a long history of weak governance and corruption, coupled with lengthy donor-supported adjustment programmes for the last 30 years. Although the level of transparency in the extractive revenues has improved slightly, the impact on the level of estimated corruption is only slight. A situation that prompted the donors to actively encourage the country for better reforms, especially in governance-related issues – as several official donor documents, institutional reforms primordially specify anti-corruption and governance initiatives. Since in the country, weak monitoring and incomplete reforms implementation prevailed, as most of the institutional reforms carried out are more symbolic than effective. In this vein, it is noted that the fundamental institutional reforms that could have led to the improvements in governance, accountability and transparency, notably the creation of an independent extractive regulatory agency, are not either pushed to the forefront nor are yet to be implemented. For instance, the Audit Bench of the Supreme Court and CONAC although being functional, are not independent of the direct influence of the PRC. Likewise, the SNH, which is under the control of the PRC, retains multiple roles like the manager of the oil revenues and regulator of the hydrocarbon sector in the country. Intrinsically, despite the theoretical progress in governance and accountability, the gap in extractive revenues paradoxically appears to have increased over time, especially during the last stages of the implementation of HIPC and the introduction of EITI. Since after about 30 years of adjustments and reforms, the hydrocarbons sector still remains at the centre of rent extraction, regime maintenance and corruption.

Explicitly, this is a worrying situation as the donors although being the main advocate for governance reforms, are equally playing a determining role in maintaining the autocratic regime in place over the years. As they are providing the country with multi-billion dollar financial support since 1988 in the form

of loans and grants. With these fundings having led to the accumulation of a huge external debt, which has ultimately been forgiven by the same donors through multilateral and bilateral debt relief, thus, rewarding the authorities for good macroeconomic performance and policies. That being the case, it is noted that while governance is clearly suffering despite being inserted in the official agenda since the early 1990s, the case of Cameroon is interesting as it is symptomatic of the larger problems in the donor-recipient country relationships, where the difficulties in dealing with autocratic regimes are illuminating. This is because the donors often assumed that they are dealing with a well-intentioned government, as most of the programmes put forward rested on the assumption that the authorities truly intended to reform and act for the good of its citizens. Besides, compounding this false assumption is the lack of institutional memory and misaligned incentives. As the officers of the donor agencies tend to have weak incentives in focussing on governance and corruption issues, and monitoring the recipient governments. This is because the incentive structure is designed to uphold a good working relationship with the client countries rather than alienating them to push for difficult choices required for governance reforms. With the promotion and remuneration structures depending on the satisfaction of the objectives of the clients and the staff's capacity to implement the projects and programmes. For this reason, the donors have advocated the putting in place of adequate micro-level indicators of governance, corruption and public service delivery, that allow the recipient country to be monitored with a comparison done over time and across countries.

In this regard, the first step in this donor-recipient game is the EITI initiative, which in itself, is a good potential first step toward opening up the EI to more scrutiny. Despite this, the implementation of the EITI in Cameroon is still in progress. For instance, the oil data verification and reconciliation process is badly mishandled. As such, since the GoC is managing the extractive resources in trust for the people, the people have the right to know what is being done with their natural wealth. Thus, establishing clear transparency and accountability requirements will increase policy efficiency, reduce opportunities for self-dealing and diversion of revenues for personal gain, raise the level of public trust and reduce the risk of social conflict. As an informed and engaged public can hold the government to account, but will also help to ensure that complex, large-scale projects meet government standards for environmental and social protection as well as revenue generation. With the overarching goal being comprehensive transparency and accountability in the governance of the EI, from the decision to extract to that of granting of concessions, the collection of revenues and management of the extractive resources. Despite this, another challenge of transparency in the EI is to ensure better governance of the natural resources that allow the local communities to enjoy the benefits of the exploitation of the natural resources from their territories. Therefore, given the increasing belief that poor governance contributes to the 'resource curse' and other dire consequences, coupled with the fact that EITI is the main platform for exchange by the different actors in the EI, it is expected that extractive governance will capture more research attention in Cameroon. Equally, it is also noted that the experience of implementing EITI in Cameroon shows the absence of an EITI law, which makes it mandatory for companies to disclose their revenue payments to the government without the need for a government agent to solicit disclosure of the revenue payments on an *ad hoc* basis. This is because if it is not made a requirement, companies shall become reticent in disclosing information on a timely basis for expedient conciliation. On this account, it is necessary to establish a framework for access to information, with the adoption of an EITI law to facilitate and render it obligatory to collect the data on the financial flows in the EI - a situation that will make the overall objective of good governance and accountability in the EI a reality in promoting the socio-economic development of the country. As EITI seems to have the incentive to turn a blind eye to these shortcomings in the implementation process in the country. But given its "compliant" status, any improper level of data quality and verification - can jeopardise EITI itself and the seal of quality it represents.

In addition, another challenging issue relating to extractive governance is the fact that although the riparian communities impacted by the extractive projects are entitled to compensation. It is noted that the implementation and monitoring of these social expenditures and sub-national transfers by the companies require their effective payments and the existence of an appropriate legislative, institutional and operational framework. This must be in line with the EITI standard requiring transparency on social expenditures and sub-national transfers by EITI-implementing countries like Cameroon. Despite this, the non-disclosure of the contracts signed between the companies and the State makes it difficult to effectively monitor the social payments or expenditures by the companies - since the legal, institutional and operational arrangements are inadequate and inappropriate to monitor the sub-

national transfers to the local communities. Besides, the non-disclosure of the contractual provisions coupled with the absence of participation of the local communities in the whole process (definition, implementation, monitoring and evaluation) are operational barriers to monitor the obligatory social expenditures and sub national transfers - which are commonly interpreted as voluntary by companies with basically no close monitoring and supervision by the public authorities. That being the case, given the context of the ongoing reforms of the EI to remain a compliant country in the EITI process, the GoC must engage in the following meaningful reforms to meet the EITI standard: Harmonise the ministerial actions on definition, implementation and monitoring of the social expenditures of companies; make decentralisation a central tool for managing and monitoring of mineral resources revenues; develop and implement an operational framework that establishes the effectiveness of the transfer to councils and local communities of their share of the mining royalty; frame and adopt an EITI law in Cameroon; strengthen the capacity of regional public, private and local entities on the EITI standard; go beyond the EITI and ensure better governance of natural resources and effective transfer of the benefits that are destined for the local communities affected by the extractive projects; set up local EITI committees in various regions for the effective and inclusive implementation of EITI; redefine the composition of the EITI committee at the National and Local levels. Equally, the companies should fully comply with the environmental and social assessment principles; negotiate and enter into agreements with the local communities and sign Community Development Agreements; collaborate more with the local communities and decentralised structures; build capacity on the EITI standard, the institutional and legislative framework of mining, oil and gas, forestry and transportation by pipeline; strengthen the capacity to monitor the social payments and sub-national transfers; support and collaborate with local organisations and traditional authorities. For this reason, given that no report on these issues has been produced in Cameroon so far, especially since the adoption of the EITI standard, evaluating the national legal/ institutional framework and the operational capacity is very paramount. Although some of the issues raised in the paper may be addressed soon given the ongoing in the EI. However, the issue non disclosure of the accounting information and contractual terms signed between the State and the companies is an obstacle to the monitoring the governance parameters in the EI. Thus, although some with more insights into the inner workings of the EI in Cameroon may dispute some of the findings of the paper. Nonetheless, it is worth noting that the paper is based on what is publicly available, and its conclusion will continue to hold until more information reveals otherwise.